

Dear Sir/Madam,

9th March 2021

**Transforming Public Procurement: UK Government Green Paper Consultation
Response from the Civil Engineering Contractors Association (CECA) Wales**

I am writing on behalf of the Civil Engineering Contractors Association (Wales), in my role as Company Director, to submit evidence to the above named UK Government Green Paper consultation. I believe that a separate response is being made on behalf of our sister organisations across England and Scotland. However, given that procurement is a devolved matter, whilst there will be many similarities in both responses, there are differences in associated legislation in Wales which need to be properly represented and accounted for in any new legislation presented by the UK Government.

In terms of background to our organisation, the Civil Engineering Contractors Association (CECA) is a confederation which represents companies who deliver, upgrade, and maintain Britain's infrastructure. With separate companies in each region and nation of Great Britain, CECA represents firms who together carry out an estimated 70-80 per cent of all civil engineering activity in the UK, in the key sectors of transport, energy, communications, waste and water. More specifically, the Civil Engineering Contractors Association (CECA) Wales/Cymru represents 60 of Wales' largest and smallest civil engineering contracting businesses with a cumulative annual turnover in excess of £1bn and employing over 6,000 people. These businesses play a huge part in supporting communities across Wales and make a significant contribution to the economic prosperity of our nation. Our members are also major providers of training and apprenticeship opportunities. And, on a more fundamental level, it is our members who will build the infrastructure that our nation needs to prosper. The procurement process, as you would expect, is fundamental to the sustainability of these businesses.

On a broad level we welcome the publication of this consultation which has the potential to radically change and improve public sector procurement practices for the long term. Poor procurement practices, along with limited visibility of public sector workflow and poor payment practices, are consistently reported by our members in Wales as being their greatest concerns. We also welcome the publication of the Construction Playbook. Although not formally adopted by the Welsh Government nor local authorities across the UK, the Playbook presents commercial best practices to guide public procurements and seeks to transform how contracting authorities and their supply chains work together. We would like

to see this being adopted as widely as possible and should complement any procurement reforms in Wales and across the UK.

To maintain a sustainable and capable capacity to deliver the infrastructure required within both Wales and the UK will require the delivery of the Most Advantageous Tender approach to be appropriately deployed. Under current arrangements we feel that those carrying the greatest commercial risk and who are required to manage this by investing in the development and employment of specialist industry resource in a competitive market, ie contractors, are often the least able to influence the outcomes. However, we are hopeful that the proposals outlined in the Green Paper will change this and will work to support the effective delivery of the principles of the Playbook. As such we are keen to work with both the Welsh and UK Governments as both develop policies which could radically transform public procurement for the long term.

Although the Green Paper relates to procurement across the public sector, as you would expect, our responses relate specifically to procurement practices in the construction sector which we feel are significantly different to practices across the broader public sector. We wish to ensure that the specific experiences of this sector, particularly in a Welsh context, are adequately reflected in any proposed legislation and are concerned that, if this does not happen, then our ability as a sector to deliver greater value from our services will be compromised.

Whilst we have provided responses to the questions as set out in your consultation we would like to highlight the following general points.

Any changes to procurement legislation and directives needs to reflect other legislation in Wales, more specifically the Wellbeing of Future Generations Act and the currently developing Social Partnership Bill. This may require specific Welsh legislation on procurement reform or an amendment to UK legislation.

We also feel the following three stages of procurement would benefit from specific legislative changes :

1. Pre-procurement/tender stage

Contracting authorities should :

- i. publish short term programmes of work (up to 12months) to increase visibility of work opportunities and help suppliers to prepare for specific procurement exercises in order to deliver greater value;
- ii. conduct open engagement with suppliers on these opportunities;
- iii. consider “past performance” (rather than just past experience) when developing tender lists.

2. Tender stage

Contracting authorities should :

- i. require all construction procurement to be “value based” rather than “lowest price” allowing full consideration of non-monetary factors such as contributions to social value, circular economy, decarbonisation, etc;
- ii. consider growth opportunities for SMEs within procurement awards ie ability of SMEs to grow should be a material consideration in any evaluation.

3. Post tender/contract management

Contracting authorities should :

- i. enforce all non-price/time related contractual requirements to ensure that a “level playing field” exists for all suppliers based on award criteria;
- ii. consider role of “procurement regulator” to monitor, audit and enforce public sector practices.

Whilst these 3 areas are already considered good practice and are followed by the better performing procuring bodies legislation would ensure that all procuring bodies are required to meet these standards and that public policy outcomes in Wales and across the UK are more likely to be delivered through investment in construction and infrastructure.

We have focused our attention on those questions which are most relevant to our sector and we hope that you find our responses helpful.

Yours sincerely



Ed Evans

Company Director, Civil Engineering Contractors Association (CECA) Wales

Consultation Responses

Q1. Do you agree with the proposed legal principles of public procurement?

We welcome the publication of this consultation and are extremely supportive of the proposals. We believe that they will lead to a reduction in the cost of public procurement, benefitting businesses and the tax payer for the long term.

We especially welcome the proposed simplified approach and clearer route of delivery, which allows the market to arrange itself accordingly.

We especially support the proposed move to awarding contracts based on the Most Advantageous Tender rather than Most Economically Advantageous Tender.

However, we acknowledge the challenges that Wales and the UK has faced as a result of Covid-19, and as such are concerned that the ambition to move away from the concept of Most Economically Advantageous Tender to Most Advantageous Tender may be especially challenging for public sector clients in the coming years. To this end, we seek further clarity as to how this can be achieved in optimal fashion. We also seek clarity on how specific Welsh legislation, especially the Wellbeing of Future Generations Act and the imminent Social Partnership Bill will be accommodated within any legislation set out by the UK Government. This is especially important for projects which are promoted in Wales by the UK Government and associated agencies.

We believe that the detail which supports the new principle of *Value For Money*, must specifically also reference the importance of public good in order to enshrine the spirit of the proposed changes into law. This should also align with the Wellbeing of Future Generations Act and the imminent Social Partnership Bill which apply in Wales.

Furthermore, the proposed interdependent principles must be supported by an overarching declaration of better procurement to help the construction sector understand how they can be applied holistically. This is especially important given the different modes of expenditure under which our sector works but also the challenges of climate change and how good suppliers can be appropriately rewarded.

Finally, we have substantial concerns over any move towards more unrestricted tendering. While having too few bidders on a shortlist results in poor competition, having too many will lead to good companies dropping out. We feel that the increased use of open tendering, where any supplier can submit a bid, rather than a prequalified shortlist is unlikely to be an appropriate way to secure best value in the construction industry. This is because it leads to the risk of a race to the bottom to differentiate between bids rather than a bias towards proven technical competence. We understand that this may be appropriate and acceptable for lower risk and less complex procurements across the public sector but feel that it is inappropriate for the construction sector.

Q2. 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?

We do agree in principle and particularly if this were extended to incorporate a Procurement Regulator” role or function :

- a. for suppliers to quickly and cost effectively intervene if procurement exercises are failing to follow legislation
- b. and/or to enforce the adoption of good practices.

Representatives should also maintain a high level of independence.

The new unit should help drive consistency of approach across public sector contracting bodies. Whilst it should be mindful of contracting authority structures and existing behaviours and practice and work collaboratively to drive improvement it should also have an enforcement role as a last resort to ensure that good practice prevails.

Q3. 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?

We are supportive of proposals to establish a new unit to oversee, review and intervene in public procurement. We understand that this consultation reflects the entirety of Government procurement and as such note that for the construction industry, the functions of the proposed unit already exist to some extent within the Infrastructure and Projects Authority. We hope that the proposed unit builds on the excellent work done within the IPA to date and recognise the challenges of establishing a unit which cuts across all departments. However, we would wish to see the UK Government engage with the Welsh Government to ensure consistency of approach between UK and Welsh Government promoted projects where possible but a mutual understanding where it is not possible. If it is not possible then suppliers need to receive clarity from both governments.

We particularly stress the importance of upskilling those working within the unit and across contracting authorities in order to give them the confidence to apply this new way of working and develop their skills and learning to drive substantial change in public sector procurement.

We fully support the establishment of the proposed panel and note that it must include representation from the construction industry with experience of delivering both public and private sector projects. We would also expect specific representation from the devolved nations. We seek further clarification on the operation of the new panel, namely how conflicts of interest will be avoided and how it will operate across all sectors.

We are also supportive of potential sanctions but stress that these must be proportionate and consistently applied. We would be keen to work with both governments on this detail.

We express concern that a newly established panel may be overly punitive in the early stages which would discourage industry from bidding for opportunities within the public sector. We

hope that the panel will focus on encouraging best practice focus and improving safety from the outset.

We feel that the ideal intervention would be at an early stage in order to prevent expenditure on the wrong procurement. This would mean the new unit would have to act early to issues raised, and for example issue an injunction if appropriate.

Q4. Do you agree with consolidating the current regulations into a single, uniform framework?

We are supportive of the objective to simplify current regulations. However, we note that they must be accessible to the wider industry.

We recognise that Utilities Contracts Regulations apply to private sector organisations, such as airport and port operators. As such, we seek clarification as to the extent to which the proposed new unit's power might apply to procurements administered by the private sector.

Q5. Are there any sector-specific features of the UCR, CCR or DSPCR that you believe should be retained?

We generally support these proposals, but suggest that they cover all procurements.

We agree that there should be consolidation of regulations but suggest sector specific appendices for clarity. We also feel that any consolidation, must be preceded by a lengthy transitional period and must work in harmony with the principles outlined in the Construction Playbook.

We would also suggest consideration be given to the development of a common standard of regulations, going further than consolidation, to drive further simplification.

Q6. Do you agree with the proposed changes to the procurement procedures?

CECA asks the UK Government to confirm which of the proposed procedures is likely to be most applicable to the construction sector. As indicated above, we are particularly concerned about the potential overuse of the open procedure.

Our research has identified ten key challenges members face during the procurement process. These are summarised in Box 1 below.

Box 1: Industry Procurement Challenges

1. Information requirements disproportional to bid value
2. Lack of client engagement during process
3. Too many bidders
4. Poor tender documents
5. Frameworks that deliver less than forecasted revenue and/or include secondary competition

6. Poor management of the procurement process
7. Poor quality of feedback post tender
8. Lack of checking and enforcement of undertakings made by contractors in tender documents
9. Weighting of tenders which does not reflect client requirements.
10. Ignoring past performance of tenderers

We generally welcome the proposed changes, especially the proposed competitive flexible procedure, which we feel is particularly suited to the construction industry and the principles of the Construction Playbook but seek further clarification as to how this procedure will be implemented.

We also recognise that the timescales proposed on participation and submission of final tenders as part of the competitive flexible procedure are very short, and we would suggest instead that they are amended to be proportionate to the scale and complexity of what is being procured.

There is particular concern that if the proposed timescales are not amended the new flexible procedure will be of limited use for complex civil engineering projects, given they only allow 25 days for the submission of tenders.

Our members are especially concerned about the unlimited number of bidders, as is intrinsic with the open procedure, being inappropriate for construction procurements which tend to incur significant tender costs, which is why a restricted procedure is often preferred.

In our view the bidding process must maximise the competition to create value outcomes, but not the number of competitors.

Having too few bidders on a shortlist results in poor competition, but at the same time, having too many will lead to good companies dropping out. We have particular concern about the increasing use of open tendering, where any supplier can submit a bid, rather than a prequalified shortlist. We believe this is unlikely to secure best value for most construction project procurements.

The open procedure is not favoured for complex civil engineering projects as the cost of bidding is extremely high and the chance of winning is substantially reduced. Our members have indicated that the wrong use of open procedure can drive down the quality of bids received. However, we understand that in the current financial climate this is an area which could be very tempting for many public sector construction clients but which is likely to result in very poor outcomes, particularly for the longer term. It also contradicts the aims of governments to deliver greater value rather than simply lowest price.

We also have concern over the development of future frameworks. Our research has found that while the framework process can be advantageous in terms of streamlining procurement processes and locking-in supply chain capacity, our members have indicated that they have often spent time bidding to be selected on a framework, only to subsequently not win any work from it at all.

Finally, we believe that the training offered to contracting authorities should also be available to bidders in order to ascertain full transparency and equality.

Q7. Do you agree with the proposal to include crisis as a new ground on which limited tendering can be used?

Limited tendering must only be undertaken in exceptional circumstances and where applicable, existing frameworks should be used. However, it appears to be of little value to construction clients as it used in the absence of suitable tender to negotiate.

We would recommend that governments undertake a comprehensive analysis of the procurement undertaken during Covid-19 to inform future decision-making in crisis situations. We would also advise that protocols need to be prepared in advance on how crisis tendering would be sourced to ensure transparency and the equitability of any deployment.

Q8. Are there areas where our proposed reforms could go further to foster more effective innovation in procurement?

We believe that future construction public sector procurement, must be driven by the principles of the recently published Construction Playbook. It is important to recognise however, that often timescales for the submission of tender documents are extremely tight, which potentially restricts the extent to which innovative solutions can be developed and the ability of the supplier and their supply chain to optimise proposals.

Conversations about procurement must happen between client and potential contractors at a much earlier stage in order to establish the innovative solutions needed to deliver world class infrastructure projects and reward the supply chain accordingly. We believe that this collaborative approach from the earliest stages of a project, sometimes referred to as Early Contractor Involvement (ECI), will be critical in addressing the impacts of climate change where low price, short term solutions are unlikely to be fit for purpose. ***Governments should require ECI to be an automatic consideration by all procuring authorities unless there is a “compelling reason” not to do so. This should be monitored and enforced by the aforementioned “procurement regulator”.***

Q9. 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?

Tendering requires extensive information and the exchange of documents. However, our members report on the lack of clarity in tender documents which makes it difficult to respond effectively, potentially leading to future problems when the project moves to delivery.

Furthermore, a lack of early insight from the supply chain often results in the need to over develop schemes at greater cost, or missing opportunities to enhance outcomes to ensure smoother planning. Processes remain far too “transactional” in far too many instances which inhibits opportunities to add value which will, in the longer term, constrain our abilities to address long term challenges such as climate change. ***Any reform must enshrine***

“collaboration” as the “first choice” approach with “compelling reasons” needing to be given for an alternative approach.

Open and fair dialogue between clients and their potential contractors is a recognised and valued element of the procurement process. We understand the tight path clients must tread in order to not fall foul of the rules, but we are concerned that this often leads to over caution during the procurement process. This, in turn, has negative consequences for both contractors and clients with clients having to rely on guidance from consultant bodies who do not ultimately carry liability for any scheme delivery and are not necessarily incentivised to deliver best value solutions.

As referred to in Q.8 we believe that the widespread adoption of Two Stage Early Contractor Involvement (a form of ECI) would drive down costs for both clients and contractors over the longer term.

We also note the significant range of different procurement systems and processes in operation across the UK. Whilst contracting authorities should be able to design procurement strategies to suit their specific needs we would seek public sector commitment to future procurements being based on established best practice and consideration of past performance - and monitored and enforced via a “strategic delivery unit/procurement regulator”

Q10. How can government more effectively utilise and share data (where appropriate) to foster more effective innovation in procurement?

CECA Wales members are supportive of the principle of appropriate data sharing, as we recognise the challenges of defining best practice. We suggest the publication of a series of sector based case studies of publicly recognised innovative procurement practices to be used as guidance in driving the procurement of future projects.

Q11. 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?

Trade associations such as CECA can play a key role in driving innovation in procurement processes via various market engagement activities and workshops for clients and our members in order to help clients develop the most appropriate procurement mechanisms for their projects.

Some suggested examples can be found below:

1. Project initiation/business case workshop
2. Early insight report
3. Market report
4. Project risks report

5. Commercial and procurement strategy workshops
6. Ad-hoc policy workshops
7. Supplier conference
8. Confidential reporting
9. Supply chain engagement
10. Meet the buyer
11. Post-project capture of lessons learnt

We also support the mandatory publishing and updating (following changes) of a public sector pipeline of planned construction procurement to help businesses invest in their workforce, plan their resources and invest in R&D to consistently deliver the world class infrastructure projects we so desperately need.

Q12. 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?

N/A

Q13. Do you agree that the award of a contract should be based on the “most advantageous tender” rather than “most economically advantageous tender”?

Yes, we fully support this proposal which will deliver economic and social value to clients for the long term. As indicated above however, we remain concerned as to how this will be managed given the immense costs facing the public sector as we look towards recovery following the Covid-19 pandemic.

We also seek further clarification on the definition of Most Advantageous Tender (MAT) in order to establish a mutual understanding of the proposed change and to ensure consistency in application. We call for a bespoke definition of MAT to ensure an equitable tender, with the onus on the customer to clearly define what is the most advantageous and mark tender accordingly.

Specific Welsh legislation in the form of the Wellbeing of Future Generations Act (and potentially the imminent Social Partnership Bill) offer a means of defining “value” and what constitutes MAT. We would recommend that both governments work together to ensure alignment for suppliers.

Q14. 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?

Yes. However, we seek further clarification on the proposed exceptions to ensure no business is unfairly penalised by this proposal. We would be keen to support governments

with their definition in this instance. In anticipation of this we would recommend that social value and carbon reduction opportunities be far better defined and set out in legislation.

Q15. 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?

Yes. This proposal will enable contracting authorities to demonstrate best value.

However, we ask for further clarification on the points raised in questions 13-15, as we are concerned over some unforeseen inconsistencies.

As with Q14, there is insufficient detail to comment. We would be concerned if the criteria for award were outside the ability of the parties to influence or indeed to respond to.

Q16-24 submitted as summary response to remainder of Chapter 4

Q16. 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?

Q17. Are there any other behaviours that should be added as exclusion grounds, for example tax evasion as a discretionary exclusion?

Q18. Do you agree that suppliers should be excluded where the person/entity convicted is a beneficial owner, by amending regulation 57(2)?

Q19. 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)?

Q20. Do you agree that further consideration should be given to including DPAs as a ground for discretionary exclusion?

Q21. Do you agree with the proposal for a centrally managed debarment list?

We would be supportive of this, provided there it is accompanied by a clear and efficient means of resolving any disputes with regard to inclusion on the list.

Q22. Do you agree with the proposal to make past performance easier to consider?

Yes, subject to our answer in Q21.

Q23. Do you agree with the proposal to carry out a simplified selection stage through the supplier registration system?

Q24. Do you agree that the limits on information that can be requested to verify supplier self-assessments in regulation 60, should be removed?

We generally support the proposals outlined in this chapter. We would suggest that there is some flexibility in the application of these proposals to ensure companies are not unfairly penalised, for example, regarding ongoing challenges. In our view, the proposed rule changes outlined within this chapter must be accompanied by clear guidance to ensure companies understand how they will be assessed in future.

We support the proposal for a supplier registration system but would recommend that the UK Government work with the Welsh and Scottish Governments to agree compatibility between existing systems so that suppliers can register via one system but with eligibility for all.

It is important also to note here, that when projects do not deliver the expected outcomes, this is not always the fault of the supplier. At times, delivery decisions have been made before the supplier was involved. As such, we are keen to seek clarification as to what might happen in these circumstances.

Q25-26 submitted as summary response to Chapter 5

Q25. Do you agree with the proposed new DPS+?

Q26. Do you agree with the proposals for the Open and Closed Frameworks?

DPS is a little used delivery solution within the construction sector and where it is applied it is viewed by many of our members as a “race to the bottom” in terms of both standards and value. It may be helpful for simple and short term projects but we believe that well operated and managed frameworks are a better option for raising standards, increasing value and supporting companies to grow. However, we need to see substantial improvements in the operation of many frameworks.

Our research has identified a series of key principles for effective frameworks to guide those procuring and managing them to ensure excellent delivery on the ground. We believe that these principles should be applied to frameworks going forward.

Box 2: Principles for effective frameworks

- Have clear funded pipeline visibility with a steady and even workstream;
- Support long term investment in resources and supply chains by ensuring that frameworks are utilised for their entire lifecycle;
- Drive collaborative culture from all involved with agreed, aligned success criteria; this may include the facility to transform into enterprise models;
- Involve contractors early in the project life-cycle by utilising tools such as Early Contractor Involvement (ECI), Professional Services Contracts (PSC);
- Balance the level of risk and reward between customer and supplier, not just as an aspiration, but enshrined in equitable forms of contract;
- Incentivise excellent performance either financially, or via a maturity model that ensures the most successful contractors receive more opportunities;
- Have a clear assessment criteria and clear objectives that are underpinned by specific feedback to all bidders;

- Justify initial procurement spend;
- Have clear consistent objectives for delivering successful outcomes;
- Have minimal secondary competitions that do little to increase efficiency;
- In line with Government ambitions for reduced carbon and social value, along with clearly defined commitments to measurement of same during the life of the framework.
- Frameworks should allow enough time for business investment and development.

As indicated above, we also have some concerns over the move towards more unrestricted tendering. While having too few bidders on a shortlist results in poor competition, having too many will lead to good companies dropping out. Complex projects need to be owned by the contractor from the outset, procurement routes that reduce the ability of these organisations being able to benefit from their own investment in value creation outcomes will lose their support. We feel that the increased use of open tendering, where any supplier can submit a bid, rather than a prequalified shortlist is unlikely to be an appropriate way to secure value in the construction industry. This may also secure the services of an organisation that may not be best placed to convert an apparent Most Advantageous Tender into a best value outcome.

We would also like to highlight here the challenges members face with UK wide duplication of frameworks, with clients often using more than one framework on regional and national levels. This means contractors often have to go through multiple and costly tenders to win work, which could have been managed via fewer frameworks and in worst cases deliver no projects despite the cost of preparation and bidding. At the same time, we would like to make the case for conformity in local authority procurements, which would be beneficial to the taxpayer and help drive innovation in project delivery.

Q27-29 submitted as summary response to Chapter 6

Q27. Do you agree that transparency should be embedded throughout the commercial lifecycle from planning through procurement, contract award, performance and completion?

Q28. Do you agree that contracting authorities should be required to implement the Open Contracting Data Standard?

Q29. Do you agree that a central digital platform should be established for commercial data, including supplier registration information?

CECA is cautious about the proposal for transparency to be embedded throughout the commercial lifecycle process. We feel that it will impact heavily on daily business activity and the development of trusted relationships between contractors and clients and the wider public. We also caution that the roll out of these proposals are used appropriately, reflect commercial sensitivities and the parameters of existing contract terms. We seek clarity as to how these proposals will interact with Freedom of Information Requests and are

extremely concerned about the impact of any reputational damage that might come from these changes.

We also have some concerns that the proposals may result in additional challenge, unnecessary delay and costs, which would very well defer the development of strategic projects for the long term.

At the same time, we recognise the benefits of the above proposals. As an interim solution we suggest firms are audited annually against a common transparency standard with clear parameters established in advance by clients as to how the information held will be used.

We also suggest the publication of anonymised best practice data as a guide for clients and contractors for future public sector procurements.

Finally, we have substantial concerns over the use of algorithms as a filter for contracting authorities to select contractors. We believe that this must be introduced gradually in consultation with industry in order to ensure no firm is unfairly penalised by the introduction of new technology.

Q30-38 submitted as summary response to Chapter 7

Q30. 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.

Q31. Do you believe that a process of independent contracting authority review would be a useful addition to the review system?

Q32. 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?

Q33. Do you agree with the proposal that pre-contractual remedies should have stated primacy over post-contractual damages?

Q34. 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.

Q35. Do you agree with the proposal to cap the level of damages available to aggrieved bidders?

No. While we understand the motivations for these proposals, the proposed limit does not provide adequate recompense in the event of an egregious breach. It should be a tenet of these reforms that complexity is reduced and therefore the chance of unintentional errors is reduced.

Q36. How should bid costs be fairly assessed for the purposes of calculating damages?

CECA suggest bid costs, based on records should be reimbursed in this case.

Q37. Do you agree that removal of automatic suspension is appropriate in crisis and extremely urgent circumstances to encourage the use of informal competition?

This should be subject to a suitable definition of crisis and extremely urgent.

Q38. Do you agree that debrief letters need no longer be mandated in the context of the proposed transparency requirements in the new regime?

We welcome proposals to make the court process fairer and faster, but seek further clarification on the anticipated outcomes.

We note also that contracting authorities have a role to play in disclosing key information to help resolve challenges at an earlier stage, saving costs for all in the long term.

We have particular concern that many of the proposals outlined within this consultation will lead to increased challenges, unleashing further cost onto industry and taxpayer. We seek clarification as to the role of the oversight panel in this regard.

It is also not clear that the transparency requirements will provide sufficient information to bidders to ensure that they have been evaluated fairly and have the opportunity to improve.

CECA is of the view that debrief letters will always remain important in increasing supplier awareness and to ensure that inadvertent misguidance arising of the process can be challenged.

Q39. Do you agree that:

- **Businesses in public sector supply chains should have direct access to contracting authorities to escalate payment delays?**

Yes, but contracting authorities must be allowed to recognise that there may be legitimate disputes regarding payment.

- **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?**

As above.

- **Private and public sector payment reporting requirements should be aligned and published in one place?**

Yes.

Q40. Do you agree with the proposed changes to amending contracts?

Q41. Do you agree that contract amendment notices (other than certain exemptions) must be published?

Q42. 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?

We believe these proposals offer substantial improvement in the way contracts are managed. However, we caution that, as indicated above, they may lead to increased challenges and seek clarification as to how these proposals drive value for the public sector and its supply chain. We also express concerns as to the fairness of the proposals referred to in Q42 to the aggrieved party.