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Procurement Reform Team
Cabinet Office
70 Whitehall
London
SW1A 2AS

25 August 2023

Dear Sir/Madam,

SMI Response – Part 2 Consultation on draft regulations to implement the Procurement Bill

I write as Chief Executive of the Society of Maritime Industries (SMI) to share with you our response to the Cabinet Office's Part 2 consultation on draft secondary legislation that will be required to implement the new regime introduced under the Procurement Bill.

The Society of Maritime Industries (SMI) is the trade association for the UK's maritime engineering, science and technology community – looking to enable maritime organisations and businesses of all sizes to thrive. This we do in various ways including annual conferences, overseas events, and trade missions. We help our members raise their profile and enjoy meaningful collaborations. As a trusted advisor to the UK Government, we look to create new momentum and progress for the whole industry and create new levels of maritime innovation within our own member community and beyond.

If you require any further information, please do not hesitate to get in contact with SMI's Policy and Research Manager, Giorgio Buttironi, at Giorgio.Buttironi@maritimeindustries.org.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'T. Chant', written in a cursive style.

Tom Chant MBE
Chief Executive, Society of Maritime Industries (SMI)

PIPELINE NOTICE

QUESTION 1: To what extent do you agree or disagree that the pipeline notice, as described in the draft SI, will usefully provide advance notice to suppliers of forthcoming contracting opportunities?

The information mandated to be included in the pipeline notice omits valuable information that is currently provided including Procurement Value, Procurement Route, and Level of Competition. In the interests of transparency, SMI believes that this information should be mandated to be included where possible.

QUESTION 2: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

The additional information noted above is important to enable suppliers to determine if they wish to bid and plan future work as described in the intent. With the Transforming Public Procurement programme aiming to increase transparency, the changes should result in the sharing of more information, not less.

PLANNED PROCUREMENT NOTICE

QUESTION 3: To what extent do you agree or disagree that the contents of the notice described in the draft SI provide the information needed by suppliers to determine their interest in the upcoming procurement that is the subject of the notice?

The splitting out of the Planned Procurement Notice from the originally proposed Pipeline and Planning Notice is welcomed. Providing as much information as is available at the time of publication is important to enable potentially interested suppliers to determine if the upcoming procurement is something that they wish to bid for, and to have the maximum time for preparation.

QUESTION 4: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

PRELIMINARY MARKET ENGAGEMENT NOTICE

QUESTION 5: To what extent do you agree or disagree that the notice as set out in the draft SI delivers the policy intention of encouraging the use of preliminary market engagement in an open and transparent way?

The introduction of a period of preliminary market engagement and a notice to indicate when it is happening, or has happened, or explain why it hasn't happened, is also a welcome addition. Steps to ensure that suppliers are not put at an unfair advantage should include making the information shared at any market engagement event widely available after the event. Details of where to find this information should be included in the Preliminary Market Engagement Notice. The use of Non-Disclosure Agreements (NDAs) during preliminary market engagement phases (increasingly common in Defence procurements) should also be discouraged as they inhibit the sharing of information and increase the likelihood (or suspicion) of unfair advantage.

QUESTION 6: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

The draft statutory instrument should be amended to include the need to signpost the availability of information shared during preliminary market engagement.

QUESTION 7: To what extent do you agree or disagree that private utilities should be exempted from the preliminary market engagement notice requirements in clause 17 of the Bill?

The Society of Maritime Industries has no opinion on utility markets.

QUESTION 8: If you wish to explain why you do not agree that private utilities should be provided with this exemption please do so.

Not applicable.

TENDER NOTICE

QUESTION 9: To what extent do you agree or disagree that the tender notice as set out in the draft SI enables a contracting authority to effectively advertise and commence a competitive procedure?

The tender notice as set out in the draft SI appears to be comprehensive and effective.

QUESTION 10: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

UTILITIES DYNAMIC MARKET AND DYNAMIC MARKET NOTICE

QUESTION 11: To what extent do you agree or disagree that the DM notice as set out in the draft SI permits a contracting authority to effectively create a dynamic market (including a utilities dynamic marketplace) for the future award of public contracts?

The DM notice as set out in the draft SI appears to be comprehensive and effective, but does not clearly state the need or reasons for the establishment of a dynamic market. It is recommended that justification for the establishment of a dynamic market should be included in the DM notice.

QUESTION 12: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

The need or reasons for the establishment of a dynamic market should be included.

QUESTION 13: To what extent do you agree or disagree that the QUDM notice as set out in the draft SI permits a contracting authority to effectively create a utilities dynamic marketplace that maintains the effect of a qualification system under the existing rules?

The Society of Maritime Industries has no opinion on utility markets.

QUESTION 14: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

TRANSPARENCY NOTICE

QUESTION 15: To what extent do you agree or disagree that the transparency notice as set out in the draft SI will provide visibility of upcoming procurements to be awarded using the direct award procedure?

The earlier publication of this information is welcomed.

QUESTION 16: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

PROCUREMENT TERMINATION NOTICE

QUESTION 17: To what extent do you agree or disagree that the contents of the termination notice, as set out in the draft SI, provide greater transparency about procurement processes that have not resulted in a contract?

The introduction of a Procurement Termination Notice is welcomed but the contents of the notice as set out in the draft SI do not provide sufficient transparency. Suppliers who have expressed an interest in bidding will be better informed of the opportunity no longer being there, so that they can stop spending money pursuing something that has been terminated.

QUESTION 18: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

The contents of the notice should be mandated to include the reasons why the contracting authority has decided not to proceed with a procurement. This is important for both the suppliers and public to understand.

ASSESSMENT SUMMARY

QUESTION 19: To what extent do you agree or disagree that the contents of the assessment summary (along with the provision of the successful supplier's assessment summary) will provide adequate information to suppliers so that they can reasonably understand why they did or did not win the contract while reducing the time it takes for contracting authorities to provide this information?

Driving greater consistency in assessment summaries and making this information available earlier is welcomed. It is also important to provide additional feedback to help suppliers improve future tenders where ever possible.

QUESTION 20: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

CONTRACT AWARD NOTICE

QUESTION 21: To what extent do you agree or disagree that the contract award notice as set out in the draft SI will be a suitable vehicle for alerting the market to the contracting authority's intent to enter into a public contract and triggering the standstill period?

The contract award notice as set out in the draft SI appears to be entirely suitable.

QUESTION 22: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

QUESTION 23: To what extent do you agree or disagree that it is appropriate for private utilities to publish a reduced version of the contract award notice for contracts awarded under a framework?

The Society of Maritime Industries has no opinion on utility markets.

QUESTION 24: If you wish to explain why you disagree with this approach please do so.

Not applicable.

CONTRACT DETAILS NOTICE

QUESTION 25: To what extent do you agree or disagree that the contents of the contract details notice, as set out in the draft SI, will give the required level of transparency of the existence and substance of government contracts?

The contract details notice as set out in the draft SI appears to be entirely suitable.

QUESTION 26: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

PAYMENTS COMPLIANCE NOTICE

QUESTION 27: To what extent do you agree or disagree that the payments compliance notice provides the transparency necessary to hold the public sector to account for its performance in paying suppliers on time?

This initiative is welcomed.

QUESTION 28: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

CONTRACT PERFORMANCE NOTICE

QUESTION 29: To what extent do you agree or disagree that the Contract Performance notice will provide adequate information about a supplier's performance on a contract?

The CPN as set out in the draft SI appears entirely adequate. The intention to publish a contract performance register is welcomed.

QUESTION 30: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

QUESTION 31: To what extent do you agree or disagree that the Contract Performance Notice will provide adequate information relating to a serious breach of contract by a supplier?

The CPN as set out in the draft SI appears entirely adequate.

QUESTION 32: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

CONTRACT CHANCE NOTICE

QUESTION 33: To what extent do you agree or disagree that the contents of the contract change notice will provide greater transparency of the proper management of government contracts?

The inclusion of the reasons for the modification is welcomed. The contents of the CCN will provide greater transparency and should be applied to defence and security contracts also unless there are reasons for national security why this should not be the case.

QUESTION 34: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

CONTRACT TERMINATION NOTICE

QUESTION 35: To what extent do you agree or disagree that the contents of the contract termination notice, as set out in the draft SI, will give greater clarity and transparency about which government contracts are still in force?

The CTN as set out in the draft Si should provide greater clarity and transparency.

QUESTION 36: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

CENTRAL DIGITAL PLATFORM

QUESTION 37: To what extent do you agree or disagree that the SI drafting provides clarity about the operation of the central digital platform?

The draft SI appears to provide sufficient information.

QUESTION 38: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

QUESTION 39: To what extent do you agree or disagree that the workaround procedure provides a viable alternative in the event of a failure in the central digital platform?

The workaround procedure appears to be a viable alternative, only to be used in the event of failure of the central digital platform.

QUESTION 40: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

CENTRAL DIGITAL PLATFORM: SUPPLIER INFORMATION

QUESTION 41: To what extent do you agree or disagree that the information required by the draft SI to be obtained via the central digital platform will save duplication and re-submission time by suppliers bidding for multiple government contracts?

While we welcome the intention to save duplication and re-submission of supplier information, it must be rigorously applied by contracting authorities – something that will require a cultural and behavioural change.

QUESTION 42: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

QUESTION 43: To what extent do you agree or disagree that use of the Central Digital Platform: Supplier Information should be mandatory during the tendering period and that, until the end of the tendering period, contracting authorities may only use the registered core supplier information submitted to the platform?

Agree.

QUESTION 44: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

UNIQUE IDENTIFIERS

QUESTION 45: To what extent do you agree or disagree that the provisions on unique identifiers will enable tracking of procurement data?

The use of unique identifiers appears to be an effective way to enable tracking of procurement data.

QUESTION 46: If you wish to explain why you do not agree that the draft SI reflects or delivers the policy intent described above, please do so.

Not applicable.

TRANSITIONAL PROVISIONS

QUESTION 47: To what extent do you agree or disagree with the approach to transitional arrangements set out in this consultation?

Starting a competitive procurement should mean submitting a notice for inviting a tender or to negotiate. Requesting EOIs should not be considered as starting a procurement.

QUESTION 48: If you wish to explain why you do not agree with the approach described above, please do so.

Not applicable.

DEFENCE AUTHORITY

QUESTION 49: To what extent do you agree or disagree that the list of defence authorities in the draft SI accurately captures the organisations that should be included within the definition?

The definition of Defence Authority in the draft SI appears adequate, but it is noted that other contracting authorities may well exercise their functions for national security purposes including other elements of the Home Office (e.g. Border Force) and elements of the Foreign Commonwealth and Development Office.

QUESTION 50: If you wish to explain why you do not agree with the list, please do so.

Not applicable.