



BRIEFING PAPER

Number 6029, 3 July 2015

Public Procurement

By Lorna Booth

Inside:

1. Introduction
2. Procurement legislation
3. Government procurement priorities
4. Buying local? Cross-border procurement in the EU single market
5. Contract performance
6. Further information on procurement

A photograph of a white rectangular sign mounted on a stone wall. The sign has the text 'WHITEHALL' in large black letters, 'SW1' in large red letters below it, and 'CITY OF WESTMINSTER' in smaller red letters at the bottom, separated by a thin black horizontal line.

WHITEHALL
SW1
CITY OF WESTMINSTER

Contents

Summary	3
1. Introduction	4
2. Procurement legislation	6
2.1 EU treaty principles	6
2.2 EU directives and their implementation in the UK	7
2.3 Other procurement legislation	10
3. Government procurement priorities	12
3.1 Value for money	12
3.2 Small and medium-sized enterprises (SMEs) and procurement simplification	12
SMEs and public sector procurement	12
Central government	13
Wider public sector	14
4. Buying local? Cross-border procurement in the EU single market	16
4.1 Cross-border contracts: number and value	16
4.2 Policies to encourage local growth	16
5. Contract performance	18
6. Further information on procurement	20

Summary

In 2013/14, the UK public sector spent a total of £242 billion on procurement of goods and services; this accounted for 33% of public sector spending. It is often suggested that government could use this considerable spending power to pursue a variety of public policy aims, such as promoting small and medium-sized enterprises (SMEs) or encouraging local growth, and both of these were taken up as aims by the coalition government of 2010-2015.

At the heart of the priorities of the coalition government was a target for central government to procure 25% of goods and services by value from small and medium-sized enterprises, and it achieved this in 2013/14. The 2015 Conservative manifesto included a pledge to increase the percentage spent with small and medium-sized enterprises to a third.

The coalition Government looked at ways to change and simplify the procurement process, including for smaller companies, to encourage their involvement in public contracts. Towards the end of the coalition government period, the emphasis of this work was extended from central government to the wider public sector.

Value for money is a key principle in public procurement, normally achieved through fair and open competition. The legal framework for public procurement is largely made up of EU Treaty principles and EU procurement directives along with some UK-specific legislation. The procurement directives were revised in 2014; so far, one of the new directives has been transposed into law in England, Wales and Northern Ireland.

1. Introduction

Public procurement is the process by which public organisations buy and rent things – it covers the purchase of anything from paper to phone services to PFI hospitals.

The public sector's broad approach to this is to seek value for money. This is defined as:

Securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought. It is not about minimising upfront prices.¹

Especially for larger purchases, value for money is generally achieved through competitive tender, in other words the public sector says what it wants to buy and various organisations provide competing offers to supply the goods or services.

The European Union (EU) operates a free market to encourage greater competition and better value in public procurements. To achieve this free market almost all procurement must adhere to EU Treaty principles relating to the free movement of goods, the freedom to provide services, non-discrimination and equal treatment, transparency, proportionality and mutual recognition.

A consequence of the free market is that most larger UK government procurement opportunities are open to companies from other EU member states on an equal footing to UK bidders. Similarly, UK companies should be able to bid for public procurement opportunities across the EU without facing local discrimination.

In 2013/14, the UK public sector spent a total of £242 billion on procurement of goods and services (including capital assets); this accounted for 33% of public sector spending (total managed expenditure).² It is often suggested that the Government could use this considerable spending power to pursue a variety of public policy aims, such as promoting small and medium-sized enterprises (SMEs), local growth or environmental sustainability.

A third of public spending is on procurement

Policy aims such as these can be considered so long as they comply with EU Treaty principles, EU directives and national law. The coalition government set itself an aim that by 2015, 25% of central government procurement expenditure would be with SMEs (directly or indirectly). The government aimed to achieve this by making the procurement process 'simpler, more open and less bureaucratic – so all businesses, no matter what their size have a chance of success.'³ This is an example of how governments can adhere to the EU principle of non-discrimination whilst easing access to public contracts for smaller firms.

¹ HM Treasury, [Managing Public Money](#), Annex 4.6.3 (July 2013)

² HM Treasury, [Public spending statistics: April 2015 release](#)

³ HM Government, [Consultation Document: Making public sector procurement more accessible to SMEs \(September 2013\)](#)

5 Public Procurement

More recently, the debate has moved from opening up central government procurement to opening up public sector procurement more widely.

Value for money for the public purse remains an imperative in procurement exercises. The previous government made savings by rationalising aspects of its procurement.

2. Procurement legislation

There are three main elements to the current legislative framework: EU Treaty principles, the EU directives and the regulations that implement them, and UK-specific rules.

2.1 EU treaty principles

One of the core principles of the *Treaty on the Functioning of the European Union* (TFEU) is to establish a single market within the EU, and this extends to public procurement. Value for money is promoted through increasing competition by allowing companies from all EU nations to bid for contracts.

To establish and encourage this single market, the Treaty sets out principles, including the free movement of goods, the freedom to provide services, non-discrimination and equal treatment, transparency, proportionality and mutual recognition.

These principles apply to almost all public procurement; there is no common threshold. It is only in the case of a contract value being so small, or the service being so niche, that the contract 'would be of no interest to economic operators located in other Member states', where the principles would not apply.⁴

"Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States."

Article 34, TFEU

"... restrictions on freedom to provide services within the Union shall be prohibited..."

Article 56, TFEU

Procurement and leaving the EU

Much UK public procurement is regulated by EU rules, which are set out in detail in EU directives and implementing UK regulations, as well as in the Treaty. These rules are controversial because they are often seen as overly bureaucratic and because they limit the ability of public bodies to 'buy British' – they are sometimes said to be among the reasons for the UK to leave the EU.

The EU rules do however offer UK firms the opportunities to supply the public sectors of other countries, as well as making it easier for the UK public sector to reach a wider range of potential suppliers, potentially increasing value for money in its purchases.

At present, the EU rules that apply to the UK also apply to other EEA countries (Iceland, Liechtenstein and Norway), under the EEA agreement. Switzerland is subject to a separate arrangement.

If the UK were to leave the EU and the EEA, it would need to decide whether it wanted agreements with other countries to mutually open up their public procurement markets. One way of doing this would be to opt into the WTO's General Procurement Agreement (GPA) for certain goods and services – however, as with the main set of EU rules, this would mean that the UK had to allow suppliers in other countries to bid for UK public procurement opportunities and would have to follow certain procedures in its procurement processes.

⁴ See Commission Interpretive Communication, [Application of the procurement directives](#) (August 2006) for more on what the Treaty principles mean for procurement in practice.

2.2 EU directives and their implementation in the UK

The EU public procurement directives regulate the publication and organisation of tender procedures for public sector contracts in certain areas and above certain thresholds.

A new set of directives were agreed in early 2014.⁵ They are now being transposed into UK law by the UK government (for England, Wales and Northern Ireland) and the Scottish government (for Scotland).⁶

In England, Wales and Northern Ireland:

- The bulk of the [Public Contracts Regulations 2015](#) came into force on 26 February 2015 (following a consultation on a draft of the regulations).⁷ These implement the 'classic' Public Procurement Directive 2014/24/EU, along with a set of UK-specific rules on procurement.⁸
- The new directive for authorities operating in the utilities sector and the new directive on concessions have not yet been transposed. [The Utilities Contracts Regulations 2006](#), implementing the Utility Contracts Directive 2004/17/EC, continue to apply.

In Scotland, the 2006 directives are implemented through the [Public Contracts \(Scotland\) Regulations 2012](#) and [Utilities Contracts \(Scotland\) Regulations 2012](#). The Scottish government are planning a co-ordinated approach to the transposition of the directives and the implementation of the [Procurement Reform \(Scotland\) Act 2014](#), with the new regulations for Scotland expected to be in place towards the end of 2015. See the Scottish Government's website [New European Union \(EU\) Procurement Directives](#) for further information.

The rules in the directives are intended to ensure the EU Treaty principles are firmly embedded in the tender process, leading to outcomes which are intended to represent good value for money. This extract from the European Commission sets out the broad approach:

⁵ [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC](#); [Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance](#); [Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts](#)

⁶ Besides the main sets of directives there are also a couple of regimes that apply to particular sectors. The [Defence and Security Public Contracts Regulations 2011](#) is the enabling UK legislation for the EU Defence and Security Directive (2009/81/EC) and applies to the whole of the UK, including Scotland. [Regulation \(EC\) No 1370/2007](#) applies to public passenger transport services by rail and by road.

⁷ Before this [The Public Contracts Regulations 2006](#) were in force, implementing the Public Contracts Directive 2004/18/EC. These continue to apply to NHS-funded healthcare services until April 2016, to allow healthcare commissioners time to adapt.

⁸ See the section 'Small and medium-sized enterprises (SMEs) and procurement simplification' for more on this second aspect.

EU procurement rules govern the way that public money is spent – rather than what the money is spent on. The focus of EU legislation is therefore primarily on the procedures that individual contracting authorities must follow when organising a public purchase for an expected value above the thresholds laid down in the Directives. EU Directives impose a number of steps that public purchasers must follow before awarding public contracts. These include rules to:

- Ensure transparency (through publication of notices in the Official Journal (OJEU), normally both before and after award procedures); apply pre-announced criteria (in particular concerning the requirements to be met in order to participate as well as the award criteria that will be used to designate the “winner”); award the contract on the basis of objective criteria (linked to the subject-matter of the procurement);
- Regulate the conduct of the procurement procedure so as to give interested tenderers a fair chance. The Directives establish a menu of common procedures.
- Define the subject-matter of the purchase through non-discriminatory technical specifications, thereby limiting foreclosure of markets by reference to proprietary or idiosyncratic specifications.⁹

Changing the directives

On 25 June 2011 the Commission published an evaluation of the impact and effectiveness of EU public procurement legislation. It concluded that “open and competitive public procurement has driven down costs by around 4%, generating savings of approximately €20 billion. This far exceeds the costs generated by the regulatory framework, which are estimated to be €5 billion”.

It also suggested that there was room to improve the directives, particularly “simplification, improving market access, notably for SMEs and fostering innovation. There is also a certain consensus that streamlining the procedures and making them more flexible is particularly important and that all actors of the procurement world could greatly benefit from it”.¹⁰

In December 2011 the Commission published its draft public procurement directives. Throughout 2012 this was discussed by the European Parliament’s Internal Market and Consumer Protection

⁹ European Commission, [EU Public Procurement Legislation: Delivering results \(June 2011\)](#)

¹⁰ European Commission Press Release, [Single Market Act: EU public procurement framework has saved around 20 billions euros](#) (24 June 2011)

committee, and various amendments to the Commission's proposals were made. The final drafts were voted on by the plenary session of European Parliament in January 2014 and were published in the Official Journal of the European Union (OJEU) in March 2014, coming into force in April 2014.¹¹

The priorities of the new directives ranged from simplification to sustainability and economic growth:

... the modernisation of the public procurement directives should strike a balance between simplification of the rules on the one hand, and sound, effective procedures linked to innovative, sustainable award criteria on the other hand, while also ensuring greater participation by SMEs, and making e-procurement the general rule.

The aim should be to fully exploit the potential of public procurement within the Single Market in order to foster sustainable growth, employment and social inclusion. In the light of the fact that public procurement contracts constitute a significant share of the economy (around 19% of EU GDP), the successful revision and enforcement of public procurement rules would considerably help in re-launching investments in the real economy and overcoming the crisis of the European economy.¹²

The Public Contracts Regulations 2015

To deliver the priorities set out above, the new public sector directive, along with the [Public Contracts Regulations 2015](#) that implements it in the UK, has changes to:

- reduce documentation and 'red tape',
- focus on making public procurement more SME-friendly; for example by encouraging procurement to be split into lots to make it easier for SMEs to bid,
- make it clearer that previous poor performance by a bidder lead to their exclusion,
- make it easier to take social and environmental aspects into account, including allowing buying organisations to require goods bear labels such as 'fair trade' (as long as they also accept goods that meet an equivalent standard that is demonstrated in other ways),

"The revised package offers an excellent overall outcome for the UK ...

These changes support UK Government priorities of economic growth and deficit reduction by making the public procurement process faster, less costly, and more effective for business and procurers alike"

Cabinet Office,
Procurement Policy Note
05/13, July 2013

¹¹ [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC](#); [Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC Text with EEA relevance](#); [Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts](#)

¹² European Parliament, [***I report on the proposal for a directive of the European Parliament and of the Council on public procurement \(COM\(2011\)0896 – C7-0006/2012 – 2011/0438\(COD\)\)](#) (Jan 2013)

- allow certain public services contracts to be reserved for mutuals/social enterprises for limited period of time,
- create a new special 'light touch' regime for social, health and some other types of services that is less stringent than for other types of procurements.¹³

Much of the coalition government's early focus in public sector procurement policy was to open up central government procurement, particularly to SMEs. More recently attention turned to the public sector outside central government (as discussed in section 3.2), and the Public Contracts Regulations 2015 also implement certain UK-specific changes in this area. The key features of this aspect of the regulations are:

- Abolition of a pre-qualification stage for procurements below the EU thresholds, and a requirement to have regard to guidance on qualitative selection issued by Cabinet Office for above EU threshold procurements.
- A requirement for contracting authorities to insert provisions in all public contracts to ensure prompt payment through the supply chain
- The requirement to advertise as many public sector opportunities in one place (Contracts Finder), and to publish award notices for contracts and call-offs from framework agreements.¹⁴

2.3 Other procurement legislation

The Public Services (Social Value) Act 2012

The [Public Services \(Social Value\) Act 2012](#) requires authorities that are engaging in certain procurement exercises for services, to consider first how the proposed procurement might improve the economic, social and environmental well-being of their area, and how these improvements might be secured. The Act applies to England, and to Wales to a limited extent.

There have been calls to extend the Act, including to the procurement of goods and works.¹⁵ The Act was reviewed by Lord Young in 2014/15. His response suggested the Act is having a positive effect where it is taken up. He said that an extension to the Act could be considered after a further two years, when three barriers to developing the Act's potential had been addressed: mixed awareness and take up

¹³ This replaces the old 'type A and type B' system, which was a system where tenders would either, depending on the type of service being purchased, have to comply with the directive's regulations in full or only in part. Comparatively more industries will fall under the scope of full compliance in the new directives. The threshold for the new light touch regime is 750,000 euros, higher than previously.

¹⁴ Cabinet Office, [Procurement Policy Note 03/15: reforms to make public procurement more accessible to SMEs](#) (18 February 2015)

¹⁵ See for example Social Enterprise UK, [UK Transposition of new EU Procurement Directives: Public Contracts Regulations 2015 Consultation response from Social Enterprise UK](#) (October 2014)

of the Act; varying understanding of the Act and inconsistent practice; and the development of measures of social value.¹⁶

The Small Business, Enterprise and Employment Bill Act 2015

The [Small Business, Enterprise and Employment Act 2015](#) received Royal Assent on 26 March 2015. It allows the UK Government to place duties on public sector contracting authorities, setting out how they conduct public procurement, and places the Government's Mystery Shopper scheme, which investigates procurement practices, on a statutory footing. It does not apply to devolved functions. See Section 3.2 for more background.

¹⁶ Cabinet Office, [Social Value Act Review](#) (February 2015)

3. Government procurement priorities

3.1 Value for money

In the Foreword to [Managing Public Money](#) Danny Alexander MP, then Chief Secretary to the Treasury, said that ‘transparency and value for public money are the essential results’ in public spending. Chapter 1 of the same document explains that public services should be carried out ‘achieving value for money’.¹⁷

Achieving value for money is the responsibility of all public bodies in central and local government, the NHS, and devolved administrations. In central government, the Cabinet Office has a specific role as the department with the responsibility for ‘the effective running of government’, and for transforming government services ‘to make them more efficient and effective for users.’¹⁸ It is the Efficiency and Reform Group (ERG) within the Cabinet Office that works in partnership with HM Treasury and government departments ‘to deliver efficiencies, savings and reforms on behalf of UK taxpayers.’¹⁹ In 2013/14 the group reported savings of £5.4bn in procurement and commercial savings (compared with 2009/10) – through the centralisation of procurement for common goods and services, the better management of contracts and commercial relations, and limiting discretionary spending on areas such as marketing, consultants and temporary agency staff.²⁰

Moves to centralise contracts into larger agreements across the public sector has been seen as potentially at odds with work to encourage small organisations to bid for public sector contracts – as discussed below. Such contracts have the potential to become too large for small organisations to bid for or manage, and paperwork may increase as contracts become larger.²¹

3.2 Small and medium-sized enterprises (SMEs) and procurement simplification

SMEs and public sector procurement

In the UK, SMEs account for about half of the total turnover of private sector businesses and account for the vast majority of businesses in terms of numbers (99.9%).²² However, compared to countries elsewhere in the European Union, a smaller percentage of businesses in

“austerity in public finances is going to be a fact of life for some time to come and there will always be pressure on governments – of all parties – to deliver more for less”

Francis Maude,
Minister for the Cabinet
Office,
May 2015

¹⁷ HM Treasury, [Managing Public Money](#) (July 2013)

¹⁸ Cabinet Office, [Cabinet Office](#) and [Cabinet Office policies](#) [online, accessed 8 August 2014]

¹⁹ Cabinet Office, [Efficiency and Reform Group](#) [online, accessed 8 August 2014]

²⁰ Cabinet Office, [End of year savings 2013 to 2014: handout and technical note](#) (June 2014)

²¹ Social Enterprise UK and Locality UK, [Response to HM Government’s consultation on making public sector procurement more accessible to SMEs](#) (November 2013)

²² Department for Business Innovation and Skills, [Business Population Estimates](#) – figures for the beginning of 2014

the UK taking part in public procurement contracts.²³ In 2012, three quarters (74%) of SME employers said that they had not done any work for the public sector in the past year; of the remainder just over half had been the direct (prime) contractor for some public sector work and just under half had been part of the wider supply chain.²⁴

A 2013 survey by the Federation of Small Businesses looked at the reasons that their members gave for not bidding for work for the public sector over the previous year. These varied – for some, public sector contracts were perceived as not being relevant to their business (44%), others were not aware of suitable opportunities (31%), found the process too time consuming or costly (20%) or thought that they could not compete with other suppliers or had little chance of winning (13%).²⁵

Central government

The coalition government of 2010 to 2015 set itself a target of 25% of central government procurement spend being awarded to SMEs by 2015 – it met this target in 2013/14 when it spent 26% with SMEs. The target included both direct and indirect spending with SMEs – direct spending is where the department itself enters into contract with an SME, whereas indirect is where SMEs are sub-contracted further along the department's supply chain (i.e. where a large company engages the services of SMEs in the delivery of a central government contract). The 2015 Conservative manifesto included a pledge to increase the percentage of government spending that is with small and medium-sized enterprises to a third.²⁶

“We will raise the target for SMEs' share of central government procurement to one-third”

Conservative Party
Manifesto 2015

The rationale for the 25% SME target was set out in the introduction to [‘Making public sector procurement more accessible to SMEs’](#):

SMEs are a crucial engine for growth: 99.9% of the UK's 4.8 million businesses are SMEs; they are responsible for over 14 million private sector jobs... There are also many good examples of small suppliers delivering significant benefits to the public sector through their greater innovation and at a comparatively lower cost base than large, incumbent government contractors.²⁷

The government's approach to achieving the target was to make the procurement process 'simpler, more open and less bureaucratic – so all businesses, no matter what their size have a chance of success.'²⁸ The government implemented a range of measures to achieve this including: introducing a Crown Representative for SMEs; preventing departments

²³ European Commission, [2014 SBA \[Small Business Act for Europe\] Fact Sheet: United Kingdom](#) (October 2014)

²⁴ Department for Business, Innovation and Skills, [Small Business Survey 2012: SME Employers](#) (March 2013)

²⁵ Federation of Small Businesses, [Local Procurement: making the most of small business, one year on](#) (June 2013)

²⁶ [Conservative Manifesto 2015](#)

²⁷ HM Government, [Consultation Document: Making public sector procurement more accessible to SMEs](#)

²⁸ HM Government, [Consultation Document: Making public sector procurement more accessible to SMEs](#)

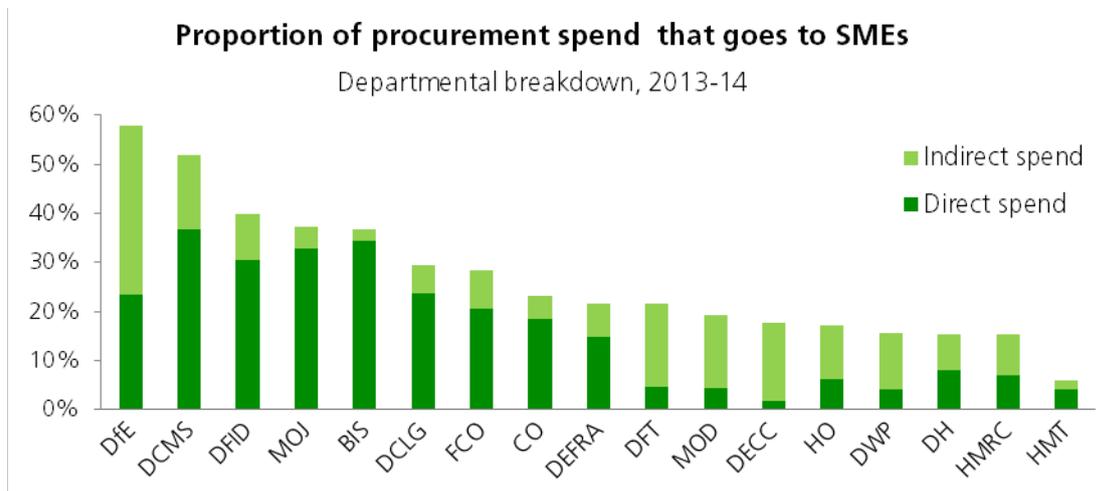
from ruling out financially sound bidders because of low turnover; introducing a Mystery Shopper service to allow suppliers to raise concerns anonymously; breaking up large contracts into smaller lots; guaranteeing prompt payment of invoices to SMEs (5 days where undisputed); improving communication between government and SMEs (for example, by publishing upcoming projects and procurements online so that SMEs can prepare properly for bids); and the simplification of bidding procedures, such as removing the requirement for a Pre-Qualification Questionnaires for bids under the EU threshold.²⁹

Proportion of central government procurement spend that is with SMEs

	Direct spend with SMEs %	Indirect spend with SMEs %	Total Spend with SMEs %
2009/10	6.5%	-	-
2010/11	6.8%	-	-
2011/12	10.0%	-	-
2012/13	10.5%	9.4%	19.9%
2013/14	10.3%	15.8%	26.1%

Source: Cabinet Office, *Central Government Direct and Indirect Spend with SMEs* (Feb/Mar 2015); *Making Government business more accessible to SMEs: Two Years On* (Aug 2013).

The table shows that government spent 26% of its goods and services procurement with SMEs in 2013/14, if you include both direct and indirect spend, thereby exceeding its target of 25%. As the chart shows, this varies considerably by department.



Wider public sector

Over the latter part of the coalition government period, attention turned to the public sector outside central government.

In October 2012, Lord Heseltine published his independent review on increasing UK growth, [No Stone Unturned](#). He recommended that the Government should place a general duty on all public bodies, not just those in central government, “setting out the procurement standards to

²⁹ Cabinet Office, [Making sure government gets full value from small and medium-sized enterprises](#)

which they should adhere, by providing a pan-government procurement strategy, legislating if necessary”.³⁰

In May 2013, Lord Young – the Prime Minister’s adviser on small business and enterprise – published his review [Growing your business: a report on growing micro businesses](#), in which he noted that local government and the NHS – rather than central government – present the biggest opportunities for small suppliers. He pointed out that small suppliers faced difficulties in accessing public procurement: “chief amongst the criticisms from SMEs about public sector procurement is the complexity, cost and inconsistency when trying to sell to more than one authority.” He therefore recommended the creation of a simpler and more consistent approach to procurement across all public sector agencies.

Following these two reviews the Government published a consultation on a range of measures to simplify and standardise public sector procurement in [Making public sector procurement more accessible to SMEs](#) (September 2013). Finally, in HM Government, [Small Business: GREAT Ambition](#) (December 2013) they set out that they would legislate and make other changes across the wider public sector to open up public procurement, providing simpler and more direct access for small businesses. Some of these commitments were implemented through the Small Business, Enterprise and Employment Act 2015 (Section 2.3) and others through the procurement regulations (Section 2.2).

³⁰ The full Government [Response to the Heseltine Review](#) (March 2013) accepted the recommendation in part, indicating that Government would consult on high level standards, which all public bodies should be looking to achieve, after Lord Young had reported.

4. Buying local? Cross-border procurement in the EU single market

There are often calls for more to be done to promote local growth through giving more contracts to local, regional or UK suppliers.

EU procurement rules have also sometimes caused public concern when they result in contract awards going to companies based in other EU states rather than a local company. One particular example of this was the award of a Thameslink contract to Siemens plc of Germany, in partnership with Cross London Trains, rather than to Bombardier Transportation UK Ltd in partnership with VeloCity. The result was considerable uncertainty for those employed at the Bombardier factory in Derby, and calls to re-tender the contract to achieve a different outcome.³¹

4.1 Cross-border contracts: number and value

Statistics show that a relatively small proportion of public contracts are awarded by Member States to firms from other Member States (for those tenders where the EU procurement thresholds have been exceeded and therefore the directives apply). Direct cross-border procurement of this kind amounted to 3.1% of the value of all contracts in 2009-2011 across the whole of the European Union.

In 2009-2011, the UK awarded 1.3% of public contracts by value directly to suppliers based in other Member States. This was a lower percentage than for all countries except France and Spain.

We can also look at the success of UK suppliers in securing public contracts abroad over the same period. Just 0.8% of public contracts by value held by UK suppliers were secured abroad.³²

4.2 Policies to encourage local growth

As set out in Section 2, the terms of the Treaty on the Functioning of the European Union (TFEU) mean that public bodies cannot in general require that the goods they buy are British, or are from particular regions or areas within the UK (unless the contract is so small that it 'would be of no interest to economic operators located in other Member states').

Just as procurement can be designed in ways that encourage SMEs to bid for contracts without discriminating explicitly in favour of SMEs, there are also ways in which procurement can be used to encourage

³¹ Margaret Beckett, HC Deb 23 June 2011 cc466-467

³² Study for European commission, DG Internal Market and Services, [SMEs' access to public procurement markets and aggregation of demand in the EU](#) (February 2014)

local growth without explicitly favouring local companies – for example through:

1. Buying things that have the potential to help boost local economies in and of themselves, for example one council bought land to rent out to a supermarket to spur the regeneration of a town centre.³³
2. Buying things in a way that helps boost local economies more indirectly, for example with associated requirements that lead to more local people being trained.³⁴
3. Running procurements in ways that encourage local potential suppliers to bid – for example through promoting potential contracts locally (although not exclusively so), or breaking them down into lots of a size that smaller local suppliers would be able to manage more easily,
4. Saving money through effective procurement and using the money saved to boost local economies in other ways.

³³ See Local Government Association, [Wychavon District Council](#) (12 Dec 2012)

³⁴ Cabinet Office, [Social Value Act Review](#) (February 2015) has various examples of how commissioners have worked to secure economic, social, or environmental benefits for their areas when buying services.

5. Contract performance

In recent years contracts carried out by the private sector have been the subject of increased scrutiny as reports of poor performance and value for money have led to interest from the media and organisations such as the National Audit Office (NAO).

Some examples include:

- The Ministry of Justice's **language services contract**, which has outsourced the provision of interpretation and translation services. The tender process was criticised by the NAO who said 'due diligence on [the] successful bid was not thorough enough.'³⁵ A 2014 follow-up by the NAO found that whilst progress has been made, 'there are a number of areas where the Ministry and Capita still need to improve.'³⁶
- The Ministry of Justice's **electronic monitoring contracts**, which outsourced the 'tagging' of offenders to G4S and Serco, have been investigated by PricewaterhouseCoopers (commissioned by the Ministry of Justice) after disputing some of the charging practices of the providers. Both companies have been investigated by the Serious Fraud Office.³⁷

The National Audit Office have published reports on [Managing government suppliers](#) and [The role of major contractors in the delivery of public services](#) (which focuses on Atos, Serco, Capita and G4S).³⁸ In its subsequent report on [Contracting out public services to the private sector](#), the Public Accounts Committee noted failings in the government's contract management and the performance of some contractors:

Government is clearly failing to manage performance across the board, and to achieve the best for citizens out of the contracts into which they have entered. Government needs a far more professional and skilled approach to managing contracts and contractors, and contractors need to demonstrate the high standards of ethics expected in the conduct of public business, and be more transparent about their performance and costs. The public's trust in outsourcing has been undermined recently by the poor performance of G4S in supplying security guards for the Olympics, Capita's failure to deliver court translation services, issues with Atos's work capability assessments, misreporting of out of hours GP services by Serco, and most recently, the astonishing news that G4S and Serco had overcharged for years on electronic tagging contracts: these high profile failures illustrate contractors' failure to live up to standards expected and have exposed serious weaknesses in Government's capability in

³⁵ National Audit Office, ['The Ministry of Justice's language services contract'](#), p. 5.

³⁶ National Audit Office, ['The Ministry of Justice's language services contract: progress update'](#), p. 5.

³⁷ National Audit Office, ['The Ministry of Justice's electronic monitoring contracts'](#)

³⁸ The National Audit Office, [Managing government suppliers](#) and [The role of major contractors in the delivery of public services](#) (both November 2013).

negotiating and managing private contracts on behalf of the taxpayer.

There is significant scope for government to improve its approach to contracting for public services. The Cabinet Office told us that there is a long way to go before government has the right commercial and financial skills to manage contracts and it needs to use the full range of powers at its disposal.³⁹

A subsequent review by the National Audit Office found that the Cabinet Office, HM Treasury and major spending departments have recognised the scale of the issue with contract management and have responded accordingly – for example with change programmes to improve contract management and more support for the commercial profession. It suggested that there was still “a lot to be worked out”, with “more emphasis on a commissioning approach, transparency over the contractors, use of open-book to align incentives and a targeted focus of the government’s commercial capability”.⁴⁰

“In our view there needs to be widespread change in the culture of the civil service and the way in which contractors are managed”

National Audit Office, Sept 2015

³⁹ Public Accounts Committee, [Contracting out public services to the private sector](#) (HC777, February 2014)

⁴⁰ National Audit Office, [Transforming government’s contract performance](#) (HC269, Sept 2014)

6. Further information on procurement

EU public procurement homepage:

http://ec.europa.eu/internal_market/publicprocurement/index_en.htm

National Audit Office procurement page with value for money reports on procurement:

http://www.nao.org.uk/search/type/report/pi_area/procurement

Contracts Finder (a database of public sector contracts over £10,000 in value) and similar sites for public sector bodies in Wales, Scotland and Northern Ireland:

<https://www.gov.uk/contracts-finder>

TED (Tenders Electronic Daily – EU site where above-threshold contracts must be published): <http://ted.europa.eu/TED/main/HomePage.do>

Procurement Policy Notes (briefing documents on procurement developments and policy):

<https://www.gov.uk/government/collections/procurement-policy-notes>

Gov.uk page on 'government buying' (for general policy, updates and guidance):

<https://www.gov.uk/government/policies/government-buying>

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publically available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcinfo@parliament.uk.

Disclaimer - This information is provided to Members of Parliament in support of their parliamentary duties. It is a general briefing only and should not be relied on as a substitute for specific advice. The House of Commons or the author(s) shall not be liable for any errors or omissions, or for any loss or damage of any kind arising from its use, and may remove, vary or amend any information at any time without prior notice.

The House of Commons accepts no responsibility for any references or links to, or the content of, information maintained by third parties. This information is provided subject to the [conditions of the Open Parliament Licence](#). The image on the front cover is licensed under [CC BY-NC-SA 2.0](#).