

## NORTH LANARKSHIRE COUNCIL

## REPORT

To: COPORATE SERVICES COMMITTEE	Subject: GOVERNMENT CONSULTATION – CHANGES TO THE PUBLIC PROCUREMENT RULES IN SCOTLAND	
From: HEAD OF CORPORATE PROPERTY & PROCUREMENT		
Date: 27 MARCH 2015	Ref: GP/LJ	

**1. Purpose**

- 1.1 The Scottish Government has invited responses to the consultation on changes to the public procurement rules in Scotland. The purpose of this report is to invite Committees agreement for the Councils response to the consultation.

**2. Background**

- 2.1 The consultation document describes and seeks views on the Scottish Governments plans to change the public procurement rules in Scotland. These changes are a result of new European legislation (also known as European Directives) about public procurement and must be implemented in new Scottish Regulations by 18 April 2016. It is the Governments aim to introduce new legislation at the end of 2015.
- 2.2 Procurement law is devolved to the Scottish Parliament, and Scottish Ministers are responsible for deciding how best to implement these changes.
- 2.3 There are three new Directives; the Public Procurement and also the Utilities and Concessions Directive. The consultation is concerned mainly with the Public Procurement Directive as it applies to the majority of public contracts in Scotland.
- 2.4 Some of the changes introduced by the new Directives are mandatory and the Government has no choice but to implement these by the 18 April 2016 deadline. There are also some elements where the Government has a choice about whether to, or how best to, implement further change. These discretionary elements, and the Governments plan to implement these, are the main focus of the consultation document.
- 2.5 The consultation also considers elements of the Procurement Reform (Scotland) Act 2014. That Act covers many lower value procurements. The consultation discusses these elements of the Act that, in particular, have yet to be further described in Scottish Regulations or guidance.
- 2.6 Taken together the Act and the transposition of the Directives has potentially significant implications for current and future methods of procuring, commissioning and delivering services in Scotland.
- 2.7 The Governments intention is that together, the Act and the new Directives will complement the Scottish Model of Procurement through simplifying, standardising and streamlining procedures for both businesses and public bodies. It will place sustainable and socially responsible procurement at the heart of the process.

**3. Proposal**

- 3.1 Much of what the Act and the new Directive will require public bodies to do and the matters on which the Government is consulting, are aligned with the Councils own aims for procurement and related delivery of wider policy objectives. These include the Councils

support for sustainable procurement and greater engagement with service users, SME's and the Third Sector. This tempered by the need for clarity, consistency, simplicity and transparency in procurement activity, which will allow the new duties to be applied appropriately and proportionately and without creating unnecessary burden for public bodies.

3.2 The proposed consultation response set out at Appendix 1 reflects the Council's position in this regard.

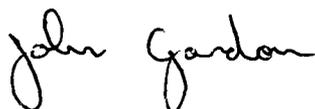
#### **4. Corporate Considerations**

4.1 Council Services areas were invited to provide input to the consultation response via the membership of the Corporate Procurement Working Group.

#### **5. Recommendation**

5.1 It is recommended that committee;

- (i) agrees the consultation responses detailed in Appendix 1; and
- (ii) that these responses will then be provided to the Scottish Government as North Lanarkshire Council's response to the consultation exercise



**Head of Corporate Property & Procurement**

Members seeking further information on the contents of this report are asked to contact Graham Proudfoot on Tel, 01698 403957

**Annex B – Respondent Information Form**



**Public Procurement: A Consultation on Changes to the Public Procurement Rules in Scotland**

**RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be returned with your response to ensure that we handle your response appropriately

**1. Name/Organisation**

**Organisation Name**

North Lanarkshire Council

**Title** Mr  Ms  Mrs  Miss  Dr  **Please tick as appropriate**

**Surname**

John

**Forename**

Gordon

**2. Postal Address**

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**3. Type of Respondent**

**Please tick as appropriate**

- Executive Agencies and NDPBs
- Local authority
- NHS
- Other statutory organisation
- Representative body for private sector organisations
- Representative body for third sector/equality organisations
- Representative body for community organisations
- Representative body for professionals
- Private sector organisation
- Third sector/equality organisation
- Community group
- Academic
- Individual

4. Permissions - I am responding as...

Individual /  Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

OR

Yes, make my response available, but not my name and address

OR

Yes, make my response and name available, but not my address

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your response to be made available?

Please tick as appropriate

Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

## Questions

Q1 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

The requirement is reasonable. The statutory guidance should set out the minimum standards of what is to be reported and when. The guidance needs to ensure consistency across the public sector in order to establish accurate reporting and transparency but should not impose a disproportionate burden on public bodies.

Q2 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

We note the development of a national set of tools to help public bodies with this requirement, we view this as potentially helpful but absent the detail it is difficult to comment further. In terms of the contents of the statutory guidance please see our comments in our response to Q1 above.

Q3 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

We would hope that the statutory guidance would not be overly prescriptive and allow public bodies to consider local circumstances. Public bodies need flexibility to decide what types of community benefit would be appropriate for the types and sizes of contracts advertised and their local areas, which in turn will empower local democracy and help improve outcomes locally. Again we would hope that the statutory guidance will not impose a disproportionate burden on local authorities.

Q4 We believe that a statutory obligation on public bodies to include relevant clauses in their contracts is the best way to ensure that contractors comply with all relevant laws and collective agreements. This should also ensure that public bodies are able to end contracts where a contractor does not meet these requirements. Do you agree or disagree with this position? Please explain your answer.

Agree  Disagree

We agree that this approach would help demonstrate that we are taking appropriate measures. However it is unclear how effective this approach will be and the possible impact on public bodies to monitor.

Q5 Is there still a case for reserving contracts for supported businesses in Scotland?

Yes  No

We strongly believe, allowing public bodies to award contracts through this process is a good way of using public money to help people who might be

unable to get a job through the open labour market.

Q6 Do you think that the definition of a “disadvantaged person” in this context should be “the unemployed, members of disadvantaged minorities or otherwise socially marginalised groups”?

Yes  No

If not, what do you think the definition should be and why?

The definition provided in recital 36 is helpful, however the lack of detail could lead to public bodies being at risk of legal challenge due to their interpretation of the definition, as such further clarity would be welcomed on the issue of defining a supported business.

Q7 Our view is that we are not aware of any arguments that currently support reserving contracts for mutual and other non-public sector bodies in Scotland, and we believe this is less of an issue in Scotland. Do you think there are any advantages or disadvantages to applying this provision to the procurement activities of public bodies in Scotland? Please explain your answer.

Advantages  Disadvantages

If the aim is to support organisations such as social enterprises and on that basis the right to reserve such contracts then this may be helpful. Perhaps the government could expand further on the meaning of this particular provision?

Q8 Should the rules about labels which apply to contracts that are EU regulated procurements also apply to lower value regulated procurement contracts covered by the Act? Please explain your answer.

Yes  No

Consistency of approach.

Q9 Do you think we should align the rules on technical specifications for all regulated procurements, including those lower value procurements regulated by the Act? Please explain your answer.

Yes  No

Consistency of approach

Q10 We believe that contracts should not be awarded on the basis of price or cost alone? Do you agree or disagree? Please explain why.

Agree  Disagree

We believe that contracts should not be awarded on the basis of price or cost alone and that it is important to balance cost, quality and sustainability to get the best value for money. We note that public bodies would be able to award the majority of available points to price or cost, if that reflected their priority for the contract in question.

Q11 We believe that public bodies should retain discretion to split requirements into smaller lots and to award more than one lot to the same bidder. Do you agree or disagree with this? Please explain your answer.

Agree  Disagree

Flexibility, not all markets lend themselves to a small lot approach. There seems no obvious reason not to allow the award of more than one lot to the same business.

Q12 To avoid creating unnecessary confusion, we believe that public bodies should have the discretion to decide whether to request additional information about sub-contractors. What are your views about this?

Each contract award is unique, public bodies themselves are best placed to decide on a case by case basis what information they need.

Q13 The Directives also make clear that public bodies are responsible for obtaining any information about sub-contractors from the main contractor. There is an option to transfer this obligation (to deliver the information) to the main contractor. We do not plan to transfer that obligation to the main contractor. What are your views about this?

There seems little benefit in transferring the obligation to the main contractor, the information a public body required could become more difficult to obtain.

Q14 We believe that we should not apply similar provisions on sub-contracting to contracts covered by the Act, as we do not think this would be proportionate. Do you agree or disagree with this?

Agree  Disagree

Please see our response to Q14.

Q15 We believe that similar payment terms for sub-contractors, as for main contractors, is a good thing and there are some measures underway, or in place, to address this. We also believe that direct payments to sub-contractors could be complicated and could mean public bodies assuming some responsibilities that should arguably remain with the main contractor. In light of this, we believe that public bodies should be able to make direct payments to sub-contractors only where the contract allows this to happen and parties agree. Do you agree or disagree?

Agree  Disagree

For each public body to decide whether to include in any given contract on a case by case basis and where there is a clear benefit in doing so, otherwise this would create an additional resource burden for public bodies.

Q16 Do you think that the same rules on selection criteria should apply to lower value regulated contracts as to higher value EU regulated public contracts? In particular, should the same rules apply on:

- The use of turnover as a selection criterion?
- The right of a public body to assume that a business does not have the professional ability needed for the performance of a specific contract, if that business has a conflict of interest which might mean that it is less able to deliver the contract?

Please explain your answer.

Yes  No

Consistency of approach and will help avoid conflict between the requirements for lower value contracts and those contracts with a higher value.

Q17 Do you agree or disagree that public bodies should retain the flexibility to decide for themselves the basis upon which groups of businesses will be able to meet tests of economic and financial standing and technical and professional ability that will be necessary to perform a particular contract or should there be national standards? Please explain your answer.

Agree  Disagree

We agree that public bodies should retain the flexibility to decide for themselves.

Q18 Should the list of criminal convictions which may result in exclusion from bidding be the same for all regulated contracts, regardless of value? Please explain your answer.

Yes  No

If an offence is serious enough to render a contractor unsuitable for the award of a public contract and receipt of public money, the value of that contract does not seem relevant.

Q19 Should public bodies be required to exclude a business from bidding for lower value regulated contracts if it, or someone who holds a senior position in it, has been

convicted of any of the offences on the list?

Yes  No

The exclusions should apply regardless of the value of the contract.

Q20 Should public bodies retain the discretion to decide whether or not to exclude a business from bidding for a contract where the body can demonstrate by appropriate means, short of a court, tribunal or administrative decision, that the business has breached its obligations to do with paying tax or social security contributions?

Yes  No

We do not believe that tax evaders should win public contracts, however given the absence of a precise definition of 'appropriate means' and the resultant possible risk of legal challenge, we do not think that it is sensible to make this a mandatory ground for exclusion.

Q21 Should public bodies be given the discretion not to exclude a business which has breached its obligations to do with paying tax or social security contributions, and where this has been established by a court, tribunal or administrative decision, if it would be disproportionate to do so?

Yes  No

There may be times when the amount of unpaid tax is very small in comparison to the value of the contract and in these circumstances a public body could be at risk of legal challenge for acting disproportionately. However, we reiterate that our general position is that tax evaders should not win public contracts.

Q22 Should public bodies also have the discretion to exclude a business from bidding for lower value regulated contracts if it has breached its obligations in relation to the payment of tax?

Yes  No

Consistency of approach.

Q23 Should public bodies retain the discretion to decide whether or not to exclude a business which is bankrupt, or is in insolvency proceedings from bidding? Please explain your answer – in particular, if you think that public bodies should have discretion in these situations, do you think that discretion should apply in every circumstance?

Yes  No

Whilst it is difficult to envisage a situation in which a public body would make an award of contract in such circumstances, there seems no reason for removing their ability to make a decision based on their own assessment of risk.

Q24 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes  No

Consistency of approach

Q25 Should a public body be allowed not to exclude a business with disqualifying criminal convictions, or which has breached its obligations to pay tax or social security, in exceptional circumstances? Please explain your answer.

Yes  No

We believe that the exclusion grounds for criminal conviction and breaches of tax and social security obligations are important. How can we define what constitutes 'exceptional circumstances'?

Q26 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes  No

Consistency of approach.

Q27 Should the law allow public bodies the discretion to decide whether or not to exclude bidders in situations where there is evidence of a breach of environmental, social and labour law obligations, grave professional misconduct, distortion of competition, a conflict of interest, a significant failure to perform in an earlier contract, or a security risk (in the case of defence and security concessions)? Please explain your answer.

Yes  No

We believe that it is important to strike a balance which allows public bodies to assess individual circumstances and reach appropriate and proportionate decisions in order to secure best value for money and minimise the risk of legal challenge.

Q28 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes  No

Consistency of approach

Q29 Do you agree or disagree with our proposed maximum periods of exclusion?  
Please explain your answer.

Agree  Disagree

We believe that the grounds for exclusion are serious, and those who do not take 'self cleansing' measures should not win public contracts. We are supportive of making the maximum length of exclusion the longest allowed by the Directives.

Q30 Should the same rules apply to EU regulated contracts and to lower value regulated contracts? Please explain your answer.

Yes  No

Consistency of approach

Q31 Should public bodies be required to check that sub-contractors do not fail any of the exclusion criteria?

Yes  No

Our view is that main contractors should generally be responsible for their supply chain rather than public bodies. Making public bodies directly responsible for the management of sub contractors is likely to result in a considerable amount of additional work for public bodies.

Q32 What are your views about what should be included in this Statutory Guidance? Please explain your answer.

We agree that the areas identified in the consultation document should be addressed in the statutory guidance.

Q33 We expect to apply only limited rules to contracts for social and other specific services to the person. These will require compliance with the basic Treaty Principles and publication of contract opportunity and award notices as described in this section. Do you agree or disagree that these rules will be sufficient for an effective light-touch regime? Please explain your answer.

Agree  Disagree

We welcome the introduction of an effective light touch regime, the proposals provide the required flexibility in the procurement of health and social care services. This will exclude many of the unique community based services which have evolved and been supported and sustained by the council to operate without mandatory exposure to competition.

Q34 We believe that contracts should not be awarded on the basis of price or cost alone? Do you agree or disagree with this position? Please explain why.

Agree  Disagree

Please see our response to Q10. Arguably more important when contracting for 'people' centered services. Over-reliance on price as a single measure of a service's worth is particularly flawed in social care where the key asset will be well trained and competent management and staff. Low cost submissions in these circumstances are likely to be indicators of low calibre staff operating under poor terms and conditions.

Q35 What are your views about what should be included in this Statutory Guidance? Please explain your answer

We agree that the principles set out in the consultation document should be addressed in the statutory guidance. The only additional consideration would be "demonstrable, relevant experience".

Q36 Should provision be made for the use of a Prior Information Notice by non-central authorities (where they choose) as the call for competition in restricted procedures and competitive procedure with negotiation? Please explain your answer.

Agree  Disagree

It provides an additional helpful optional tool. We don't understand why NHS would be excluded from issuing PINs. Social Work is currently in transition towards many of its services integrating with health services and already has a number of joint agreements and funding initiatives in place.

Q37 Do you agree or disagree that this provision should also apply to lower value regulated contracts, that is, those that are below European regulated thresholds and are regulated by the Act? Please explain your answer.

Agree  Disagree

Consistency of approach.

Q38 Do you agree or disagree that public bodies should be permitted to award a contract without competition in the circumstances permitted by the Directives? Please explain why.

Agree  Disagree

Continues to allow public bodies flexibility to award a contract without competition in the specific circumstances permitted by the Directives.

Q39 Do you agree or disagree that public bodies should also be permitted to award lower value regulated contracts in similar situations? Please explain why.

Agree  Disagree

Consistency of approach.

Q40 Do you agree or disagree that all non-central authorities using the restricted procedure should be able to set the time limit for the receipt of tenders by agreement with candidates? Please explain why.

Agree  Disagree

It can make the procurement process simpler, easier and faster.

Q41 When using the open procedure, should public bodies retain the flexibility to determine whether to evaluate bids before evaluating qualification and exclusion criteria? Please explain your answer.

Yes  No

In certain circumstances the public body only has to check the qualification criteria for the business which has submitted the highest scoring bid, saves time and resource for public bodies.

Q42 Should public bodies be allowed to ask for supplementary or missing information and to ask a company to provide clarification of their bid?

Yes  No

We believe that this approach is fair on all businesses, who may otherwise find their bids automatically excluded due to an administrative error in submitting their bids. Provides clarity in tender submissions and true bid evaluation.

Q43 Do you agree or disagree that the rules in the Directives about modifying contracts should not apply to contracts under the Act? Please explain why.

Agree  Disagree

The argument set out in the consultation document about the new rules on modifying contracts being quite restrictive is supported.

Q44 We believe we should continue to progress the work plan from the Construction Review report, rather than requiring the use of BIM or similar in works contracts and design contests. Do you agree or disagree? Please explain your answer.

Agree  Disagree

On the basis that public bodies are unlikely to be ready by the publicised deadlines. However, we would suggest that it may be helpful to set a financial threshold value above which all projects must utilise BIM and in particular where making use of the private sector either directly or through Hubs.

Q45 Do you agree or disagree that we should establish an overall confidentiality and security framework which individual public bodies would use to inform their own approach to the security handling of electronic communication? Please explain your answer.

Agree  Disagree

This seems to permit public bodies more flexibility than the alternative.

Q46 Do you agree or disagree that we should maximise the time available to implement fully electronic procurement processes and defer the requirement for full electronic communication for the maximum permissible time?

Agree  Disagree

It is important that public bodies have appropriate systems and procedures in place to cope with this change. Public bodies and businesses bidding for public contracts will require sufficient time to plan and implement this change.

Q47 Do you agree or disagree that all communications about concession contracts in a procurement exercise should be by electronic means?

Agree  Disagree

Please see our response to Q46.

Q48 Do you think that public bodies should retain the flexibility to decide when the use of electronic catalogues is appropriate? Please explain your answer.

Yes  No

Given the very wide range of goods, services and works procured, it's for public bodies to determine when the use of electronic catalogues is appropriate.

Q49 Do you agree or disagree that we should defer the requirement to provide the European Single Procurement Document in electronic form only until 18 April 2018? Please explain your answer.

Agree  Disagree

Because a rapid adoption of this change would be challenging for businesses and public bodies. Sufficient time needs to be allowed to plan and implement this change.

Q50 Do you agree or disagree that we should defer until 18 October 2018 the provision that says businesses should not have to submit supporting documents where the public body awarding the contract holds these? Please explain your answer.

Agree  Disagree

Please see our response to Q50.

Q51 Do you agree or disagree that we should defer the obligation on public bodies to use e-Certis until October 2018?

Agree  Disagree

Please see our response to Q50.

Q52 Do you agree or disagree that we adopt this option for utilities contracts? Please explain your answer.

Agree  Disagree

Consistency of approach and increased transparency.

Q53 Do you think that dynamic purchasing systems should be available as a tool for purchasers in respect of regulated procurements?

Yes  No

It provides an additional helpful optional tool.

Q54 Do you think that the same rules which apply in Article 34 of the Public Procurement Directive should be extended to lower value regulated procurements under the Act?

Yes  No

Consistency of approach.

Q55 Do you agree or disagree that we should continue to allow public bodies in Scotland to use central purchasing bodies as described in this section?

Agree  Disagree

Central purchasing bodies and collaborative procurement is a key aspect of public procurement, they often secure better value for money, avoid duplication of effort and make procurement more professional.

Q56 Do you agree or disagree that we should not require the use of central purchasing bodies for particular types of procurement, thereby allowing public bodies to exercise discretion as to when, and which, central purchasing body to use?

Agree  Disagree

Although we think that what central purchasing bodies do is generally advantageous, it is important that public bodies retain the flexibility to choose whether or not to use them on a case by case basis to meet their own local objectives.

Q57 Do you agree or disagree that we should not restrict access by Scottish public bodies to European centralised purchasing activities? Please explain your answer.

Agree  Disagree

Consistent with operating in an 'open' European market. Operationally this is unlikely to happen?

Q58 Do you agree or disagree that the monitoring and enforcement body for Scotland should be the Scottish Ministers, acting through the existing Single Point of Enquiry? Please explain your answer.

Agree  Disagree

Reporting and Monitoring activities should build on existing structures. In that respect, the Scottish Ministers, through the SPoE are well placed to fulfil many of the new responsibilities on behalf of the Scottish Procurement community.

Beyond that general observation, the Council considers that the constitution of the enforcement body, and the powers which any such review body is to enjoy, should be in proportion both to the benefits which would accrue to the procurement process generally (and this should be based on clear evidence) and also to the increased cost to contracting authorities of having their procurement decisions subject to challenge to a potentially greater extent than is now the case.

Albeit regulated procurements are not necessarily covered by the remedies contained in the 2012 Regulations, nevertheless economic operators may pursue redress in the form of damages and/or interdict through the Court system at present. The evidentiary basis for concluding the insufficiency of existing enforcement mechanisms is not clear to the Council, either from the

consultation documents or otherwise.

The Council anticipates that other consultation responses may encourage a constitution of the proposed enforcement body on the Scottish Ministers which presupposes its contribution to access to justice, primarily based on the perceived barrier which legal cost presents to the pursuit of effective remedies.

It should be borne in mind that the Scottish Government has recently received a report on the extent to which court expense can operate as a barrier to justice. Reference is made to Sheriff Principal Taylor's January 2014 report in that respect, and to its contribution to planned Scottish Government reform. It is not clear to the Council that creation of a specific enforcement body for procurement decisions is required in the context of the conclusions of Sheriff Taylor's report and its recommendations.

The Council further notes the wide definition of regulated procurement. The Council is anxious that proposals to change the enforcement regime for procurement take account of the potential increased volume of challenge to procurement decisions (not limited to award decisions); the cost impact of this on contracting authorities in a climate of challenging public sector finance ; and that a degree of proportionality is brought to bear in assessing the perceived benefits to procurement decisions that the constitution of the body may entail against the impacts it could have on contracting authorities.

As explained, contractors currently pursue remedies through the court system. This has led to a body of case law developing in the area of remedies for procurement exercises. Proposed changes to the administrative enforcement regime for procurement decisions should bear in mind the value of that body of precedent, and the clarity it has provided to both economic operators and contracting authorities.

Moreover, decisions as regards the constitution of an additional enforcement body should be based on clear evidence that its anticipated use would be such as could be expected to strain the capacity of the court system. It is not clear to the Council why, absent evidence of a potential strain to the court system of the proposed changes, and in the context of very recent review of the cost of civil litigation in Scotland, why the court system is not to be considered as continuing to provide a sufficient avenue for the pursuit of procurement remedies.

Q59 Do you agree or disagree that we should simply copy the provisions on applications to the court from the existing 2012 Regulations? Please explain your answer.

Agree  Disagree

The extent of available remedies in procurement exercises should, above all, be in proportion to the effect that a procurement decision could have on the functioning of the internal market.

It would in the Council's opinion be disproportionate to replicate the ineffectiveness remedy currently available under the 2012 Regulations for every regulated procurement for example.

Q60 Do you think there is a need for a review body which sits beneath the national courts?

Yes  No

See Answer 58 above.

Q61 If so, do you think the review body should be established as a tribunal within the Scottish tribunals system?

Yes  No

Generally, see Answer 58 above.

If there is a view taken that an additional enforcement body, or bodies, is/are required, and that this is not to be the Scottish Ministers (or indeed, is in addition to an administrative body, regardless whether the Scottish Ministers) then the Council sees no reason why this enforcement body should not be established as a tribunal within the Scottish tribunals system.

Q62 Or do you think it should take some other form, for example, a Scottish Procurement Ombudsman?

Yes  No

Economic operators currently are able to access the court system in pursuit of redress for perceived legal grievances, as explained in Answer 58 above.

They also currently enjoy access to the SPSO in respect of perceived shortcomings in service delivery and administration, including in the conduct of procurement exercises.

The Council has responded to the effect that, if there is a concluded benefit, based on clear evidence and taking account of the other concerns raised in Answer 58, in constituting a further enforcement body (or bodies), possessed of significant enforcement powers, then this should rely on existing structures, including the Tribunals Service.

Should these additional bodies be constituted such as to meet a perceived unmet demand for further or better scrutiny of procurement decisions, it is not clear what remaining "gap" in oversight or access would be met by also creating a Procurement Ombudsman. The Council recognises the value already provided to scrutiny of administrative decisions by the SPSO. It is not clear why a specific ombudsman would be required for regulated

procurements only.

Q63 What is your view of the Scottish Government's position to broadly endorse the principles of open contracting and commitment to work with civil society and wider stakeholder groups to improve transparency in its procurement practices as part of its continuing programme of procurement reform?

We broadly support the Scottish Government's position.