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The Rt. Hon. Baroness Armstrong of Hill Top
Chair, Lords Public Services Committee
House of Lords
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By email: HLPUBLICSERVICES@parliament.uk

6 December 2021

Dear Baroness Armstrong

The Government Response to the Transforming Public Procurement Green Paper Consultation

Earlier this year we corresponded in relation to the procurement and commissioning of services in the voluntary and public sectors. I am now writing to update you on the progress to date on reforming the procurement regulations.

You may have seen the Written Ministerial Statement I made today, which draws the attention of the House to the publication of the Government's response to the Green Paper on Transforming Public Procurement. This is a significant milestone on the journey towards a public procurement system that is simpler, more open and competitive, that will work for British business and make it easier for small businesses and voluntary, community and social enterprises (VCSEs) to win public sector contracts. I look forward to bringing forward legislation when Parliamentary time allows, which I have no doubt you and members of your committee will engage with in your usual thoughtful and constructive manner.

I will not repeat the detail of the Government's response here - though I commend it to you - but rather I wanted to draw out key points that I hope will assuage the concerns you had earlier raised with me.

Firstly, one of the key changes we have made in light of feedback received is to retain the Light Touch Regime for certain social, health and education services and, in fact, improve it. A key issue raised was around service user choice and allowing for individual care in cases such as adult and children's residential care, fostering and special education.

We have listened and therefore the new legislation will retain this regime, and allow user-orientated services to be treated differently. We have recognised an underlying issue which simply reinstating the existing Light Touch Regime for such services would not resolve. The current Light Touch Regime assumes that competition is the default, and while this is absolutely right where possible, where there are legislative obligations for choice such as those in the Care Act 2014 and the Childrens and Families Act 2014, Local Authorities should not have to navigate inappropriate procurement requirements and build unnecessary bureaucracy into their decision making to ensure they can comply. To address this we are considering the extent to which we can exempt from competition those services where service user choice is important. Our aim is to ensure that the individual is put at the centre of these procurements, with regulations that are as simple as possible for contracting authorities, not only in terms of the specific procurement obligations but the way they interact with other legislative requirements.

Secondly, we are proposing to retain the ability for contracting authorities to reserve procurements for specified services for public service mutuals, in line with the current Public Contracts Regulations (PCRs) regulation 77 (and equivalent provisions in the utilities regulations). We propose to increase the maximum contract duration for such contracts from 3 to 5 years and also intend to include a power in the Bill to potentially expand this regulation to benefit a broader collection of organisations in the future.

Thirdly, I can confirm our intention to move ahead with an ambitious programme of reforms that will benefit SMEs and VCSEs, which play such an important role in delivering public services. The simplification and consolidation of the current legislation as far as possible into a single, uniform regulatory framework will mean that when commissioners decide that a contract is the best way to deliver the services they need, the procurement process will offer an agile and flexible route to market. The new regime will give public sector buyers more freedom and flexibility - allowing negotiation with suppliers and flexibility to design the buying process to meet the needs of their specific procurement, and creating the flexibility to allow more innovative procurement. We have put more emphasis on planning and pre-market engagement and this should support effective use of the new competitive procedure (which gives contracting authorities the ability to design and run a procedure that suits the market in which they are operating). The new public notice requirements for planning procurements and early market engagement will provide transparency of contracting authorities' procurement pipelines and processes. We will create a single, more efficient 'tell us once' register of suppliers.

Fourthly, the proposals will help to reinforce the Government's commitment to taking account of social value in procurement, and also address some of your committee's concerns about the extent to which the regime might limit effective collaboration:

- Removing the requirement for evaluation to be made solely from the point of view of the contracting authority, but only within a clear framework. This will help to reinforce social value and give a greater focus on outcomes and solutions for communities;
- Changing the assessment from Most Economically Advantageous Tender (MEAT) to Most Advantageous Tender (MAT), which will reinforce the message to

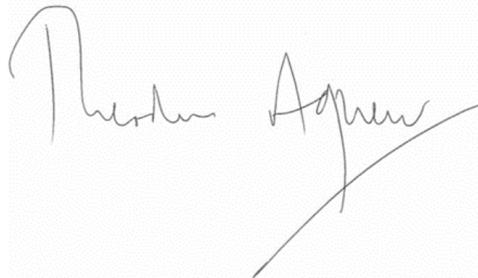
contracting authorities that they can take a broad view of what can be included in the evaluation of tenders;

- Ensuring that award criteria are proportionate to the requirement by embedding concepts of proportionality. For example, the proposed legal regime will require the timescales of a procurement procedure to be proportionate to the cost, nature and complexity of the requirement, and that the conditions of participation in a procurement are a proportionate means of checking suppliers have the necessary capability to avoid treating smaller suppliers unfairly.

Finally, you raised the question of alignment of these reforms with proposals to reform healthcare commissioning. Since we last corresponded, the Health and Social Care Bill has made significant progress; you will note that the detail of how the Provider Selection Regime that will apply to healthcare services is largely to be set out in secondary legislation. We recognise the need for integration between local authorities and the NHS (both for joint commissioning and integrated provision across health, public health and social care), and my officials are working closely with those in the Department for Health and Social Care to ensure a coherent regime for these services.

I would be delighted to meet with you to further discuss these issues, if you would find that helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Richard Agnew', with a long, sweeping flourish extending from the end of the signature.

Lord Agnew Kt