

Assessing the transparency gap in public procurement.

A report for The Information Commissioner.

21/09/2018



Executive summary

The transparency gap is a well-known and longstanding problem. Hundreds of billions of public pounds are spent every year across government on public services - yet there is no attendant right of public access to information about them. Prior to this report, however, very little was known about the substance of the challenge.

Using several datasets on public contracting and spending, Spend Network has been able to shed some much needed light on the issue. We hope that this short report, and the full datasets provided in the annex, can start a new chapter of the conversation within the ICO and among policymakers on how to close the transparency gap effectively.

We must also, however, acknowledge some limitations of the study. Despite being able to call on 120m lines of data, where the data has been made available much of it is published in disparate, and inconsistent sources. We are particularly mindful of the poor contracting award notice data, which is both incomplete and often lacks crucial information such as contract values and contract end dates.

There is also a limitation on the insight that the data, as it is currently structured, can provide. We cannot know if the spending data is for the provision of public services while new contracting practices see the blurring of lines between capital, goods and service expenditure. Spend Network

has used its knowledge and experience of both the data and the market to provide the best insights we can within these limitations.

What this report covers

Section one provides a high level overview of the procurement market in central and local government and the NHS, and profiles key buyers and suppliers in the major categories of spending. It shows that, while the transparency gap covers a range of services, a small cluster of spending categories and suppliers account for a great deal of the deficit. The transparency gap is not smoothly or consistently shaped. Our data suggests that, rather, it may be a series of narrow, but deep blind spots.

Yet there are limits to the insights we can draw from this. The principal one - and perhaps the most pressing one when discussing the designation of contractors under FOIA - is that no organisation in the UK really understands the role of subcontractors in outsourcing.

The collapse of Carillion has reportedly left an estimated 30,000 subcontractors in its supply chain owed money. However, as part of section two explains, while government spending and contract awards are concentrated among suppliers, there is a gap in both public and official understanding about how public money is distributed in a contractor's supply chain. There is limited knowledge of which companies deliver which aspects of services, which ones hold relevant information, and whether they should be subject to FOIA.

Section two also describes how the use of "alternative delivery models" for public services have widened the transparency gap in ways our data may not fully account for over the past decade. For

example, the commercial activities of local authorities is obscured from public view by the use of joint ventures with the private sector and trading companies. Meanwhile, NHS reforms have put CCGs in charge of commissioning but failed to make them transparent.

Section three explores the merits and drawbacks of using three types of threshold to designate contractors under FOIA. Our analysis suggests that imposing a contract duration threshold of five years would capture 4.8 percent of contracts by volume but 27.8 percent by value. We discuss other options and propose that a combination of thresholds - common in other areas of company law - may be appropriate.

In section four we proposed to assess the uptake of the transparency clause in the Crown Commercial Service's (CCS) Model Services Contract. This proved impossible since very few ex-ante contract documents are published and Spend Network has been unable to gather those that are published. Furthermore, the CCS does not monitor implementation of the clause. Instead Spend Network attempted to gather as many contract documents as possible (see methodology) and subsequently analysed 55 of them. However this sample was of limited use.

Finally in section five, we used tendering data to identify purchasing consortia issuing tenders that were not subject to FOIA. The method involves some approximation but it clearly shows that at least three types of FOIA-exempt organisation are using public tendering procedures. These are: Housing Associations, purchasing consortia, and companies.

The case for designating further types of organisation in close proximity to the public sector is also made in the section two literature review.

Recommendations

The designation of contractors under FOIA is a complex issue with far reaching consequences. It is important to get it right and as such we believe that further research and debate on the transparency gap is required before drawing any conclusions. Spend Network recommends that the ICO:

1. Consult with government and the UK Open Government Network on ways to improve the low quality of contracting data, including contract award notices and contract documents.

A lack of quality, comprehensive information about public contracting hinders both this analysis and the public understanding of outsourcing. Closing this open-data transparency gap is a necessary step in closing the FOIA-based transparency gap. One option should be to consider the widespread adoption of the Open Contracting Data Standard to central and local government bodies, and the NHS including CCGs).

2. Conduct a survey of information rights departments to explore how many requests are received about contractors.

It has proved impossible to assess the uptake of transparency clauses in public sector contracting. Another approach would be to see if the system works *in practice* by surveying a sample of bodies about the number of requests received about contractor-held information and their outcomes.

3. Continue to explore the threshold question, including the deployment of a combination threshold, for designating contractors under FOIA.

A combination threshold would permit some flexibility to ensure, for example, that a revenue threshold does not disproportionately burden Small and Medium Enterprises (SMEs) while still

capturing specific contracts that are of significant public interest. Threshold research should also consider how to establish a monitoring function for spending and transactions.

4. Consult with the Crown Commercial Service (CCS) to understand what knowledge and statistics it can share regarding subcontractors.

Public money and service delivery is distributed across large and complex supply chains. Learning more about this process is crucial to setting effective thresholds that actually advance the public's right to know. This year the CCS introduced a requirement for large contractors to tender certain subcontracts but an independent assessment of the effectiveness of this policy is required.

Acronyms used

Table 0.1 - Table of acronyms

Acronym	Full name
CCG	Clinical Commissioning Group
CCS	Crown Commercial Service
CIC	Community interest company
DBEIS	Department of Business, Energy and Industrial Strategy

DCMS	Department for Culture Media and Sport
DFE	Department for Education
DFID	Department for International Development
DFT	Department for Transport
DHSC	Department of Health and Social care
DWP	Department for Work and Pensions
ESSU	European Services Strategy Unit
FOIA	Freedom of Information Act
HACA	Homes and Communities Agency
ICO	Information Commissioner's Office
LATC	Local Authority Trading Company
MOD	Ministry of Defence
NAO	National Audit Office
NFT	NHS Foundation Trust
NHS	National Health Service
NHS BSA	NHS Business Services Authority
NHST	NHS Trust

PbR	Payment By Results
PFI	Private Finance Initiative
PHB	Personal Health Budget
SIB	Social Impact Bond

Market overview

The ICO asked Spend Network:

“To illustrate and map what key parts of the modern public sector landscape look like, focusing on the volume and nature of services outsourced by the public sector and private organisations delivering services of a public nature.

This should focus on the most significant aspects of delivery and key areas or sectors where there is a particular risk of a transparency gap regarding public access to information.”

This section first uses buyer and sector specific supplier data to present a high level overview of procurement in central and local government and the NHS. It then draws on data from the top 1,000 public sector suppliers to profile key suppliers in the top 5 categories of spending across government. The aim of this section is to briefly illustrate the major contours of the UK market for public sector outsourcing. The full datasets, included in the annex, provide granular detail.

Both the buyer and supplier datasets cover a four and a half year period beginning October 2013 and ending March 2018. It is important to note, however, that because we used a subset of the data for our supplier analysis, the total figures for this analysis are significantly less than those of the buyer analysis, which include spend with all suppliers as well as governmental transfers.

Spend Network has presented annual average spends throughout this section - as opposed to year by year breakdowns - because there has been no significant annual variation. The data shows the size of the transparency gap in various categories of government, but it does not show any discernible growth trend.

Central government

Central government spent an average of £107 billion a year on the purchase of goods and services during the period analysed. The spend was concentrated in a few key areas - with 75.2 percent spending in just five categories - and 98.4 percent of spending in 15. Table 1.1 shows the 15 categories with the greatest annual spending by category in £millions, and as a percentage of the total spend.

Table 1.1 - Annual average spend by category in central government

Category	Annual spend	% of total spend
Works - Construction, Repair & Maintenance	24489	22.4
Facilities & Management Services (F&MS)	20265	18.6
Education	17978	16.5
ICT	10220	9.4
Consultancy	9074	8.3
Financial Services	5972	5.5
Healthcare	5521	5.1
Mail Services	3872	3.5
Passenger Transport	2717	2.5
Human Resources	1778	1.6
Utilities	1737	1.6

Housing Management	1495	1.4
Legal Services	1086	1
Arts & Leisure Services	566	0.5
Vehicle Management	496	0.5
Total (15 categories)	107266	98.4

This spending category data gives an important insight into the size of the transparency gaps across central government. Yet it is not a complete picture. The ICO asked Spend Network to focus on public services, however, disambiguating the procurement of goods and services is not straightforward.

For example, in the Works category it is common for government to procure 'build and manage' contracts where, for example, a contractor builds a school / hospital and then runs the services, allowing for consistent revenue from the supplier and allowing the buyer to spread costs over time.

The distinction between goods and services is not always clear and the use of categories alone cannot identify whether or not public services are contained within the spending. However, certain sectors, such as Facilities and Management Services (F&MS), Education, Consultancy, Healthcare, Passenger Transport, Housing Management and Arts and Leisure Services are likely to be more service dominated, and therefore of greater priority to the ICO. The transparency gap in these sectors alone affects £52.9 billion of public money (as shown in the table above).

Key buyers in central government

The purchasing of goods and services is highly concentrated within central government. Figure 1.1 shows the annual average spend of the ten highest spending bodies. These ten government buyers account for 87 percent of total spending.

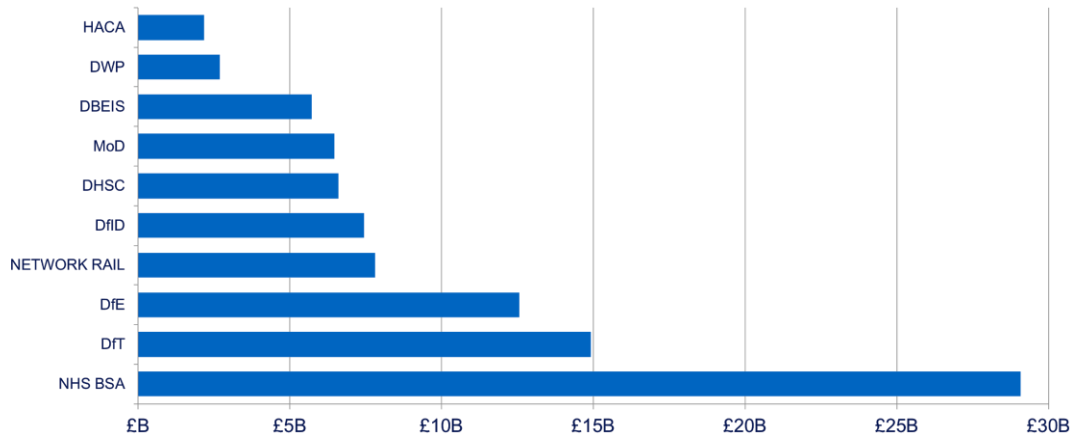


Figure 1.1 - Top 10 buyers in central government by annual spend

Key suppliers to central government

Figure 1.2 shows the 20 companies with the largest average annual income from central government. These 20 contractors together received 38 percent of central government's procurement spend. These companies are relatively high profile and will be familiar to most readers. Some large companies, however, such as G4S, are not in the top 20 due to their corporate structure, which divides operations and revenue across multiple legal entities.

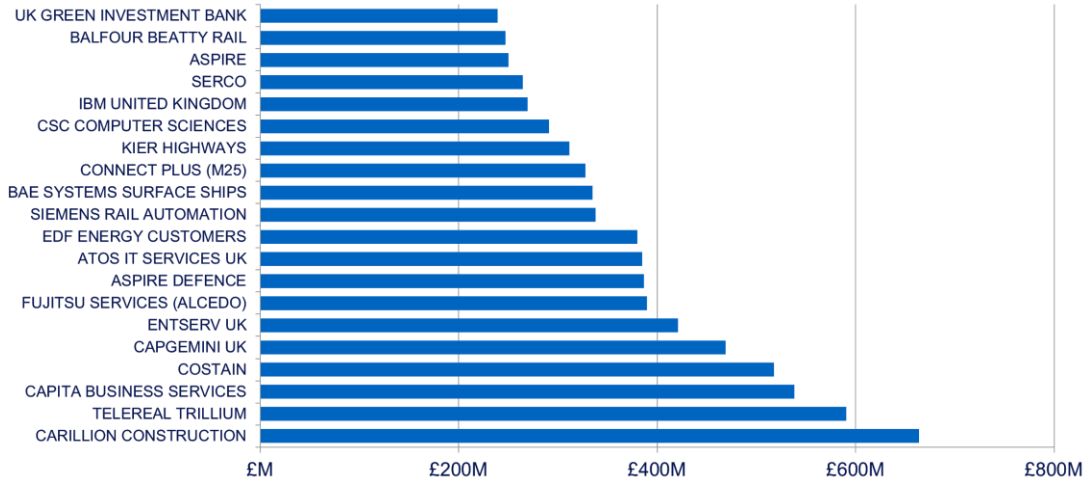


Figure 1.2 - Top 20 suppliers to central government by annual spend

Local government

Local government spent an average of £58 billion a year on procurement (with a total of £261 billion over the four and a half year period). As with central government, the majority of this purchasing is contained in just a few categories. Table 1.2 shows the 15 categories with the greatest annual spending by category in £millions, and as a percentage of the total spend.

Table 1.2 - Annual average spend by category in local government

Category	Annual spend	% of total spend
Works - Construction, Repair & Maintenance (WCR&M)	£ 11,034	19
Facilities & Management Services (F&MS)	£ 7,748	13.3
Social Community Care Supplies & Services - Adult	£ 6,957	12
Education	£ 6,749	11.6
Passenger Transport	£ 4,353	7.5
Healthcare	£ 2,715	4.7
Financial Services	£ 2,460	4.2
Environmental Services	£ 2,392	4.1

Housing Management	£ 2,022	3.5
ICT	£ 1,973	3.4
Human Resources	£ 1,497	2.6
Social Community Care Supplies & Services	£ 1,243	2.1
Consultancy	£ 1,201	2.1
Vehicle Management	£ 929	1.6
Utilities	£ 824	1.4
Building Construction Materials	£ 793	1.4
Total (15 categories)	£ 54,890	94.5

As with central government the data cannot be easily disambiguated to show separate totals for goods and services.

The data shows that local government spends £7 billion on social care, £4.3 billion on passenger transport, £2.3 billion on environmental services and £2 billion on housing management annually. These local services affect people's everyday lives and, while less noteworthy in value than Works and F&MS, may generate a greater amount of public concern and debate.

Key buyers in local government

Transport for London (TfL) is by far the largest spender at the local government level with an average annual spend of £5.8 billion (10% of all spending). Figure 1.3 shows the next ten largest local government buyers, all councils, which account for 17.1% of all local spending.

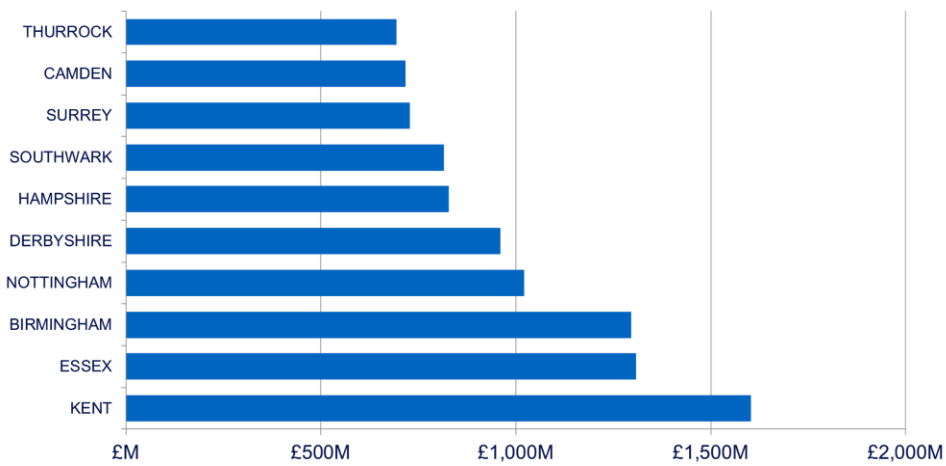


Figure 1.3 - Top 10 buyers in local government by annual spend

Key suppliers to local government

20 companies won 31.9 percent of business with local government bodies over the studied period. They are drawn from a range of the top categories listed above. Figure 1.4 shows the annual average income of the top suppliers to local government.

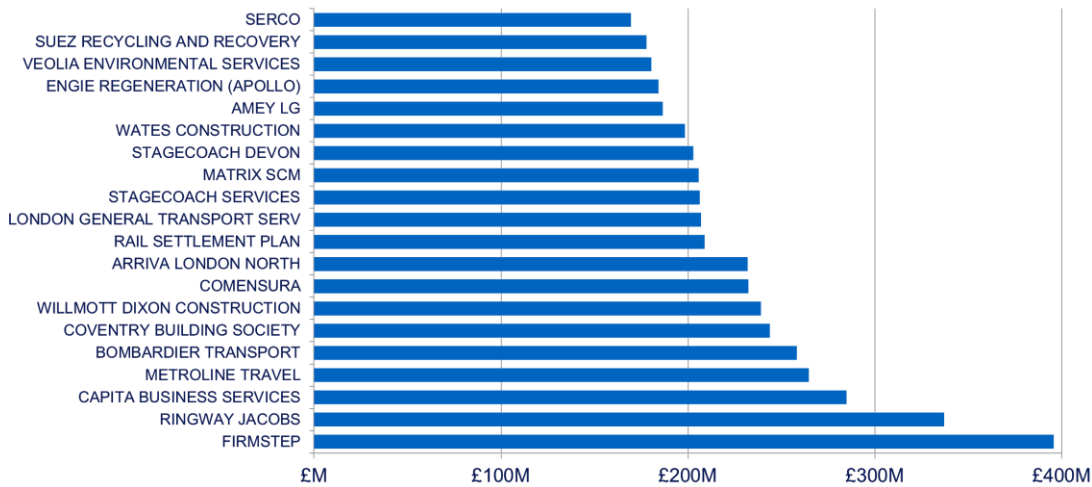


Figure 1.4 - Top 20 suppliers to local government by annual spend

The NHS

Spend Network's NHS buyer data covers NHS Foundation Trust spending worth a total of £36.6 billion (at an average of £8 billion a year). It should be noted that other centralised NHS bodies (including the Business Services Authority) are classified as central government bodies.

The data does not include CCG spending because CCGs are exempt from NHS spending transparency requirements. There are no public statistics on the total amount that CCGs spend with external suppliers, so we cannot know the precise impact of this gap in the data.

Table 1.3 shows the 15 categories with the greatest annual spending by category in £millions, and as a percentage of the total spend.

Table 1.3 - Annual average spend by category in the NHS

Category	Annual spend	% of total spend
Healthcare	£ 2,257,278,435	27.7
Facilities & Management Services	£ 1,516,929,695	18.6
Works - Construction, Repair & Maintenance	£ 1,379,664,402	16.9
Human Resources	£ 544,556,490	6.7
Information Communication Technology	£ 420,443,783	5.2
Education	£ 371,655,814	4.6
Social Community Care Supplies & Services - Adult	£ 343,153,068	4.2
Consultancy	£ 312,901,465	3.8
Financial Services	£ 245,242,672	3
Utilities	£ 198,317,759	2.4
Catering	£ 78,965,491	1

Building Construction Materials	£	74,844,395	0.9
Passenger Transport	£	58,524,411	0.7
Environmental Services	£	57,417,377	0.7
Legal Services	£	55,685,594	0.7
Mail Services	£	52,332,016	0.6
Total	£	7,967,912,867	97.79

Healthcare and the 'usual suspects' - Works and F&MS - account for more than 60 percent of NHS spending. Other significant categories include HR - to coordinate flexible hiring and deployment of staff across the service - as well as social care and education.

Key buyers

Ten Foundation Trusts were responsible for 31.7 percent of spending with contractors. Figure 1.5 shows the respective spending of these trusts.

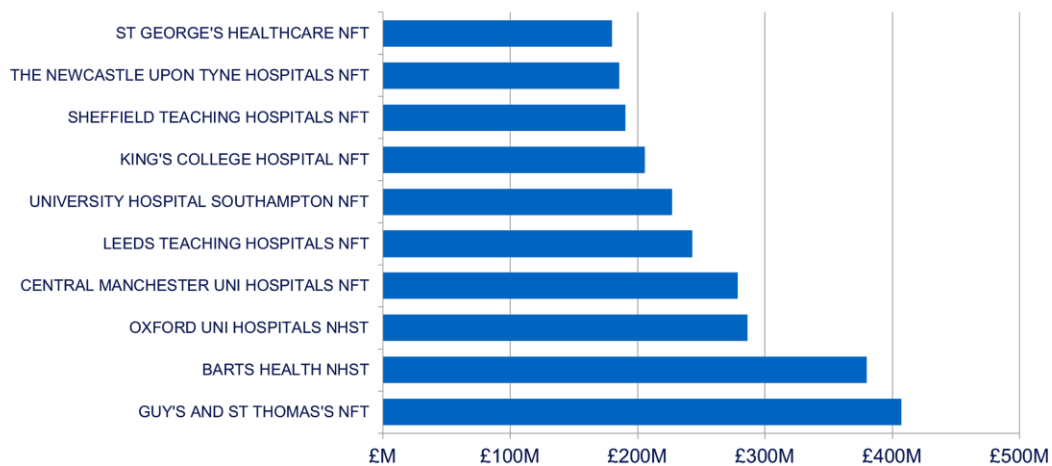


Figure 1.5 - Top 10 buyers in the NHS by annual spend

Key suppliers

NHS Professionals, the market leading NHS recruitment company, is the top supplier to NHS Foundation Trusts. Pharmaceutical companies and medical technology companies make up a significant proportion of the remaining top 20. Figure 1.6 shows these companies and their annual average revenue earned from NHS Foundation Trusts.

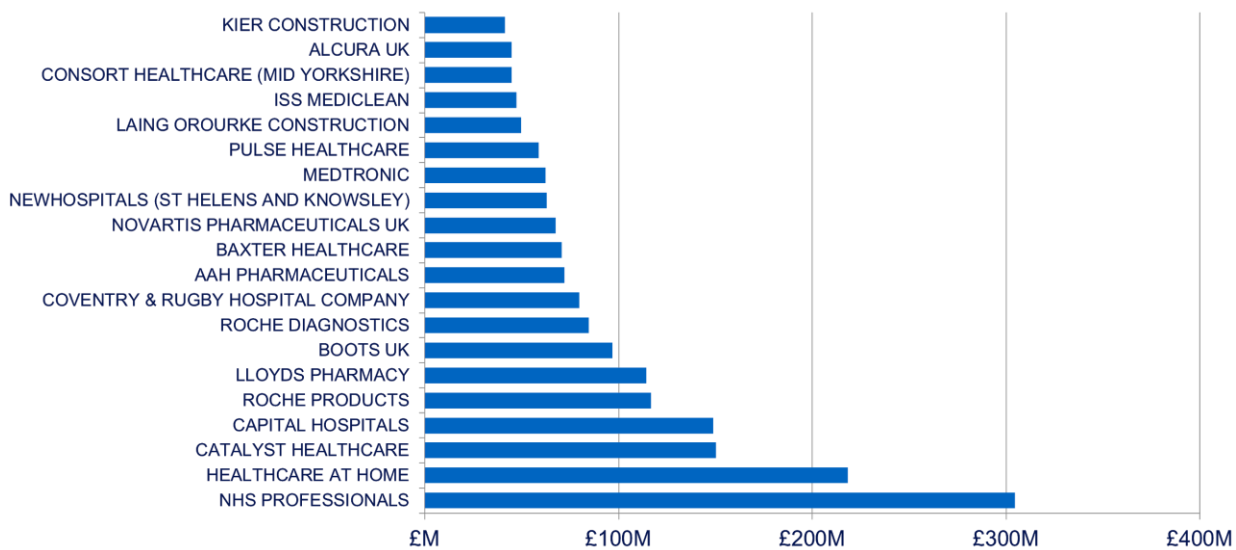


Figure 1.6 - Top 20 suppliers to the NHS by annual spend

Key suppliers in top categories

This section of the report uses data on the top 1,000 suppliers to profile the top 20 suppliers in the top five categories of spending across central and local government and the NHS combined. These five categories account for 65 percent of the £52.5 billion total spend and, as the data shows, spending is concentrated on the larger suppliers within them.

This data is indicative however as categories are a generalised tool to cover 110 million lines of data. Poor quality source data, a lack of identifiers in the data and the need to use machine learning to apply categories, means that there is limited ability to refine categories, to make them more precise or to ascribe the correct category in the first instance. Moreover, many contracts can span several categories at once in order to provide savings through economies of scale, having a one-stop shop provider. For instance, a construction company might win a design & build contract on a building which also has maintenance and facilities management services bolted on following completion.

In the two largest categories, Works and F&MS, more than one third of revenue is earned by 20 suppliers. Figure 1.7 shows the top 20 suppliers in Works (which accounted for 38.4% of all supply value in this category).

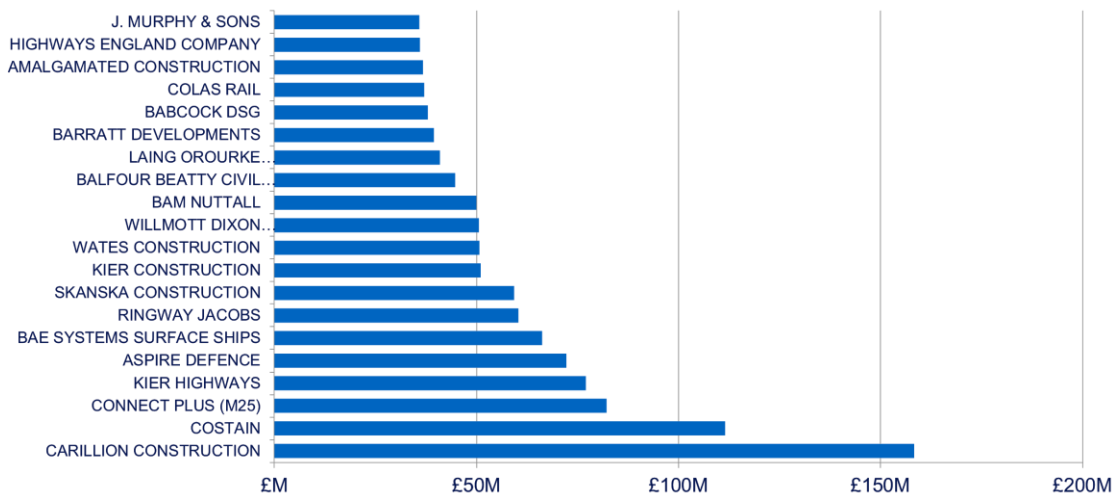


Figure 1.7 - Top 20 suppliers in Works category by annual spend

Figure 1.8 shows the top 20 suppliers in F&MS (which accounted for 37.8% of all supply value in this category).

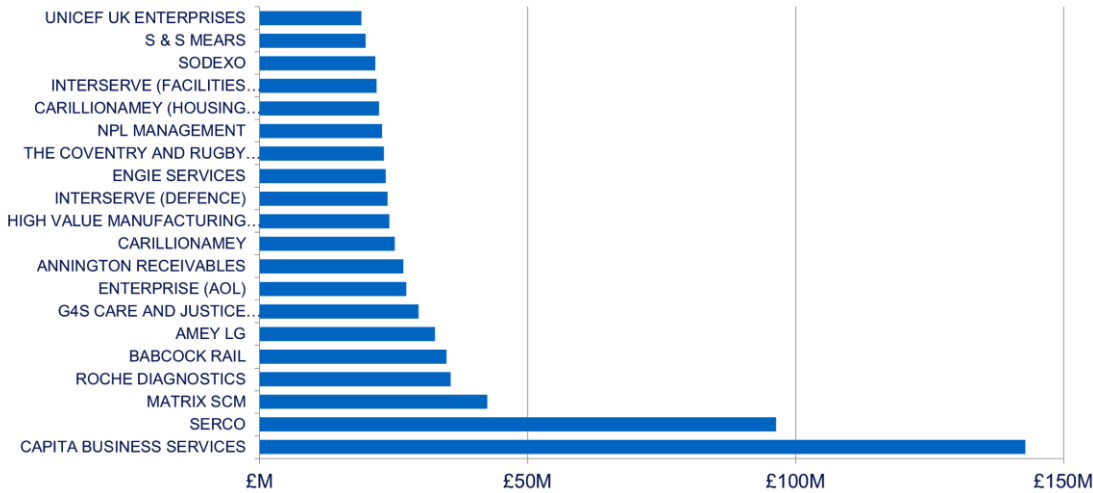


Figure 1.8 - Top 20 suppliers in Facilities and Management Services category by annual spend

In the third, fourth and fifth largest categories, between two thirds and three quarters of all revenue is earned by 20 suppliers. Figure 1.9 shows the top 20 suppliers in Passenger Transport (which account for 75.4% of all supply by value in this category)

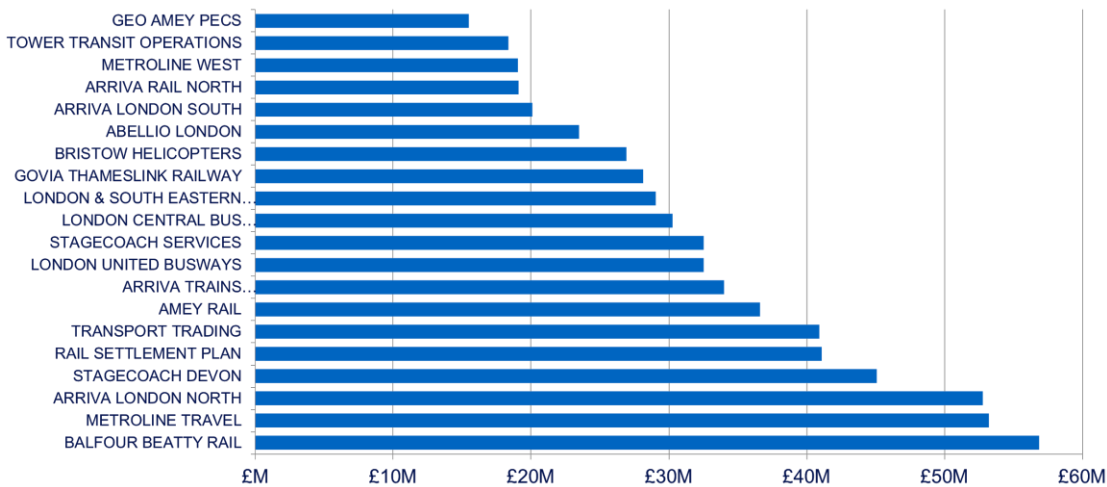


Figure 1.9 - Top 20 suppliers in Passenger Transport category by annual spend

Figure 1.10 shows the top 20 suppliers in Consultancy (which account for 72.3% of all supply by value in this category)

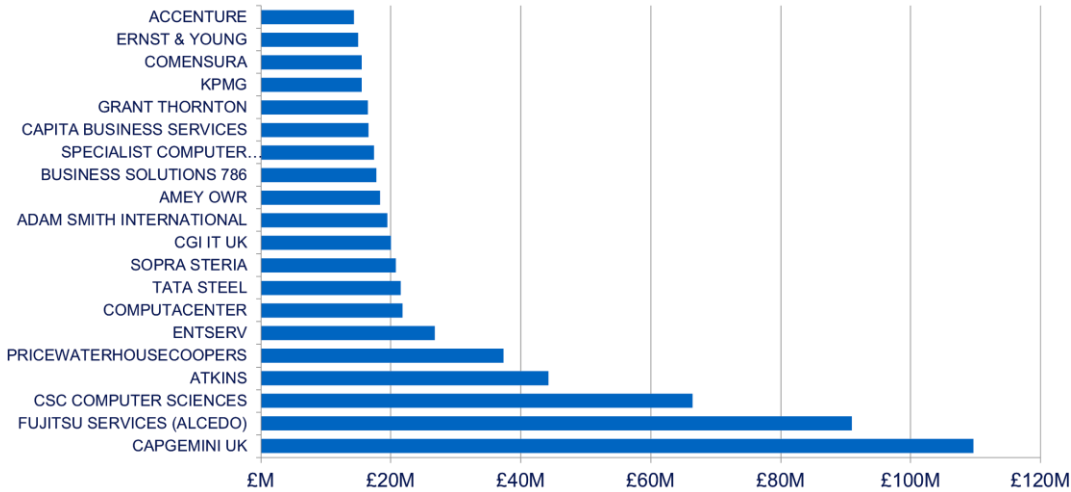


Figure 1.10 - Top 20 suppliers in Consultancy category by annual spend

Figure 1.11 shows the top 20 suppliers in ICT (which account for 69% of all supply by value in this category)

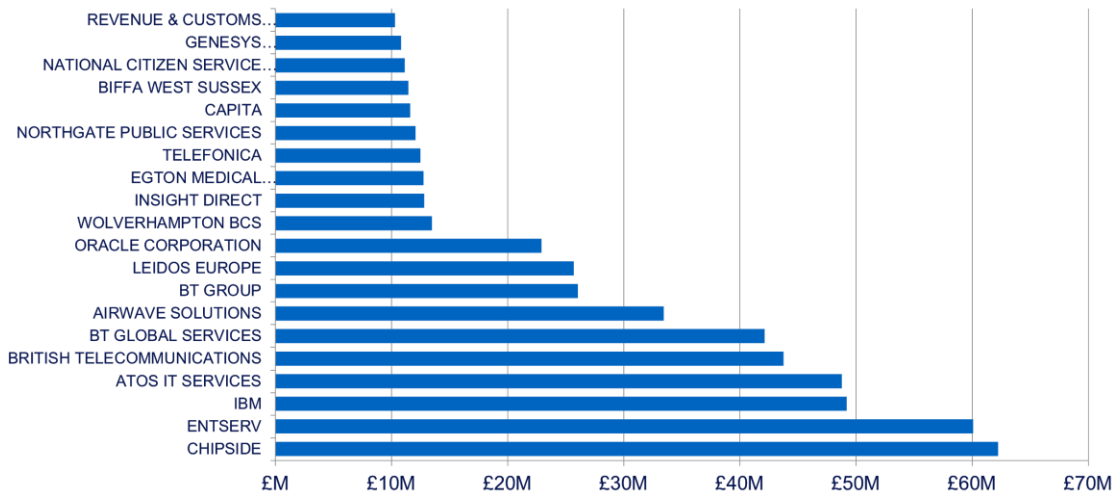


Figure 1.11 - Top 20 suppliers in ICT category by annual spend

Alternative delivery models

The ICO asked Spend Network:

To explore how public service delivery has changed over the last 10 years with the increasing use of the private sector to deliver public services and the evolution of more complex or innovative delivery models.

To achieve this, Spend Network conducted a literature review to assess how “alternative delivery models”, a broad term which captures everything that is not traditional in-house provision or orthodox outsourcing, have widened the transparency gap over the past decade.

A lack of central, public data on alternative delivery models means that a rigorous analysis of their prevalence is beyond the scope of this report. Instead we focus on major trends in central and local government and the NHS, and briefly consider other relevant transparency gap issues (such as PFI and academies). Where relevant, some of the challenges for restoring transparency under FOIA to these outsourced services are considered.

Many of the delivery models described below have been the subject of inquiries and criticism by parliamentary and research organisations. This may be read as evidence of the need to close the transparency gap and (re)introduce greater transparency into public service. For the sake of brevity, however, this research will not reproduce those criticisms or make value judgements about the merits of different models. The following sources were consulted to produce this literature review:

- *A Short Guide to Commercial Relationships*, National Audit Office. 2017.
- *After Carillion: Public Sector Outsourcing and Contracting*, Public Administration and Constitutional Affairs Committee. 2018.
- *Alternative delivery models explained* (web), Department for Culture, Media and Sport. 2017.
- *Bring Housing Associations and Public Service Contractors under FOI*, Campaign for Freedom of Information. 2017.

- *Commercial Councils: the rise of entrepreneurialism in local government*, Localis. 2015.
- *Department of Health and Social Care Annual Report and Accounts 2017-2018*, Department of Health and Social Care. 2018.
- *Evaluation of the Social Impact Bond Trailblazers in Health and Social Care*, London School of Hygiene and Tropical Medicine.
- *The Financial Commodification of Public Infrastructure*, European Services Strategy Unit. 2016.
- *Independent Commission on Freedom of Information Report*, FOI Commission. 2016.
- *Making Public Service Markets Work*, Institute for Government. 2013.
- *Open Public Services Progress Report 2014*, Cabinet Office. 2014.
- *Outcome-based Payment Schemes. Government's Use of Payment by Results*, National Audit Office. 2015.
- *Outsourcing Public Services*, New Economics Foundation and Trades Union Congress.
- *Payment by Results: Analytical framework for Decision-makers*, National Audit Office. 2015.
- *PFI and PF2*, National Audit Office. 2018.
- *Procurement Policy Note 01/18: Supply Chain Visibility (web)*, Crown Commercial Service. 2018.
- *Public Service Mutuels: State of the Sector 2018*, Social Enterprise UK. 2018.
- *Start a public service mutual, (web)*, Department for Culture, Media and Sport.
- *Transformation Rehabilitation*, National Audit Office. 2016.
- *Transparency in outsourcing: a Roadmap*, Information Commissioner's Office. 2015.
- *The Work Programme*, National Audit Office. 2014.
- *Work Programme Evaluation: Operation of the Commissioning Model*, Finance and Programme Delivery, the Centre for Economic and Social Inclusion, the National Institute of Economic and Social Research, the Institute for Employment Studies and the Social Policy Research Unit at the University of York. 2014.

Central government and cross cutting trends

Payment by Results

The use of payment-by-results (PbR) commissioning in key sectors such as employment, probation and social services is one of the central legacies of the Coalition government's public services programme. PbR contracts

specify desired outcomes and then link some or all of the payment of suppliers to their performance in respect of those outcomes.

Beyond linking payment to performance, there are two more key features which are common (but not exclusive) to PbR contracting. Firstly, the commissioning body does relatively little in terms of programme design and monitoring, and instead gives the supplier a high degree of freedom to achieve outcomes in whichever way it deems best. This is known as minimum service prescription or 'black box commissioning'. Secondly, the commissioning body often awards high-value and longer-term contracts to a 'prime contractor', which then subcontracts some or all of the contract to other suppliers with relevant expertise. When the government uses prime contractors, it relies heavily on private companies to manage long and complex supply chains of private, voluntary and public sector organisations.

In theory, PbR shifts the responsibility of designing effective programmes to service providers, who are given greater freedom to innovate, and it is cost-effective for the state because at least some payment is linked to performance, which reduces waste¹. Yet reviews of several flagship PbR policies have generally not found clear evidence of these benefits in practice.²

The Work Programme is a good example of PbR contracting. The policy, which ran from 2011 to 2017, aimed to help long term unemployed people back into work and linked the payment of suppliers to sustained outcomes.

¹ <https://www.nao.org.uk/wp-content/uploads/2015/06/Payment-by-results-analytical-framework-for-decision-makers.pdf>

² See for example the inquiry by the Public Accounts Committee on the Troubled Families Programme (2016)

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news-parliament-2015/troubled-families-report-published-16-17/>, the 2018 Justice Committee on Transformation Rehabilitation

<https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2017/transforming-rehabilitation-17-19/>, the University of Manchester's review of the Drugs and Alcohol Recovery Payment by Results Pilot Programme http://research.bmh.manchester.ac.uk/epidemiology/NDEC/research/publications/PbRDR_Final_Report.pdf,

the multi-stakeholder, comprehensive review of the Work Programme <https://www.gov.uk/government/publications/work-programme-evaluation-operation-of-the-commissioning-model-finance-and-programme-delivery>, or the Institute for Government's Making Public Service Markets Work

https://www.instituteforgovernment.org.uk/sites/default/files/publications/Making_public_service_markets_work_final_0.pdf.

In most cases, suppliers were paid after they secured a client continuous employment for six months.³ The programme allocated £3.3 billion in 40 contracts to 18 prime provider organisations. An estimated 80 percent of the total contract value was linked to payment by results- with the remaining 20 percent provided upfront to assist with setup costs⁴.

The 18 prime providers in the Work Programme worked with approximately 800 subcontractors (as of March 2014), according to a joint study by the Centre for Economic and Social Inclusion, the National Institute of Economic and Social Research, the Institute for Employment Studies and the Social Policy Research Unit at the University of York conducted on behalf of the Department for Work and Pensions. The study found that 46 percent of subcontractors were privately operated, 40 percent were voluntary, community or social enterprise organisations, while 14 percent were from the public sector.⁵ It also found that some prime contractors, including Serco and G4S, acted as “prime managing agents” and subcontracted 100 percent of service delivery⁶.

PbR is used in wide range of sectors – although the extent to which outcomes are linked to payments varies significantly. Take for example Transforming Rehabilitation, in which “Community Rehabilitation Companies” - consortia of larger prime contractors with smaller and voluntary organisations - are delivering probation services. The project is worth £3.7 billion yet only between three and ten percent of total payments will be linked to outcomes⁷.

There is no public data or comprehensive reporting on the scale of PbR commissioning, which makes it impossible to assess the uptake of PbR in the wider context of outsourced services. The Cabinet Office’s final report on its Open Public Services programme, which drove PbR, describes active schemes across health, employment, drug recovery, housing, immigration and services for troubled families.⁸

³ Further incentives were used to put emphasis on long term outcomes, such as a sustainment fee (paid every four weeks the client remains in employment following the six month period) and larger payments to tackle more difficult cases.

⁴ <https://www.nao.org.uk/wp-content/uploads/2014/07/The-work-programme.pdf>

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/425301/rr893-report.pdf

⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/425301/rr893-report.pdf

⁷ <https://www.nao.org.uk/wp-content/uploads/2016/04/Transforming-rehabilitation.pdf>

⁸ <https://www.gov.uk/government/publications/open-public-services-2014-progress-report/open-public-services-2014>

The trend towards prime contractor and black box commissioning means that outsourced services are increasingly delivered by supply chains - not individual contractors. Yet information about the design, implementation and monitoring of these supply chain services is held by private contractors. This introduces both complexity and opacity about where information is 'held' and which contractors should be subject to FOIA. Designating contract signatories under the FOIA may not necessarily close the transparency gap - it may be necessary to designate subcontractors. However, there is no public data on the contracting arrangements between prime contractors and their suppliers⁹, which makes it harder to determine an appropriate threshold based on public sector data.

Social Impact Bonds

Social Impact Bonds (SIBs) are PbR schemes in which public service commissioners work with private and/or third sector partners who provide both upfront investment and the delivery of the service. The investors are then paid a premium linked to the outcomes of the programme. For example, a project called Positive Families Partnership was jointly commissioned in 2018 by five London boroughs (Sutton, Tower Hamlets, Bexley, Merton and Newham). It aims to prevent 350 young people in "at-risk families" from being taken into care (an expensive procedure for councils with negative outcomes for young people's education and future prospects).

£4.5m in upfront capital for the Positive Families Partnership is provided by Bridges Fund Management, a private venture focused on "sustainable and impact investment" with further support provided by the Big Lottery Fund. The councils are obliged to pay Bridges Fund Management £214 per week for every child that is not in care over a four year period - with a maximum total payable of £10m.

⁹ As of April 2018, prime contractors who hold a contract worth more than £5m per annum are required to post tender and award notices on Contracts Finder relating to subcontracting opportunities worth £100,000 or more. It is too early to assess whether they are complying with this requirement. The Crown Commercial Service (CCS) collects data on prime contractor supply chains but does not publish this information due to perceived issues around commercial confidentiality.

<https://www.gov.uk/government/publications/procurement-policy-note-0118-supply-chain-visibility>

The initiative aims to use “family support therapies” to “identify and address the trigger points for problematic behaviour”¹⁰ and will contract three specialist organisations to deliver these services; a social enterprise incorporated in 2015, a charity which has “been building stronger families since 1869”¹¹ and the South West London & St George's Mental Health NHS Trust. There is no public information on the contracting arrangements between the parties.

SIBs have received lots of press but the sums involved are relatively small. There are 40 SIB schemes in the UK (of 108 worldwide), which have collectively raised £40.3m in capital, according to Social Finance, the organisation which developed the SIB model¹².

PFI and PF2

The use of Private Finance Initiative (PFI) projects to outsource services has declined since 2008, however, the taxpayer will still pay almost £200 billion for services (at approximately £10 billion per year) under existing arrangements.

In PFI schemes, a public sector body contracts a consortium of private companies, via an incorporated Special Purpose Vehicle (SPV), to finance, build and maintain an infrastructural asset, such as a road, hospital or school. Rather than raising capital for investment, the public body tenders a contract and then makes an annual payment to the successful bidder for the duration of the contract, which is usually between 20 and 30 years.

The initiative was introduced by the 1992-1997 Conservative government and usage of the scheme expanded under New Labour. The initiative later attracted significant public and parliamentary criticism and was redesigned as the (highly similar¹³) PF2 under the Coalition government. There are 715 PFI and PF2 projects in operation according Treasury data, which currently cost the taxpayer more than £10 billion per year.¹⁴

¹⁰ <https://www.socialfinance.org.uk/projects/positive-families-partnership>

¹¹ <http://fpmcic.com/visionmissionvalues.php>

¹² <http://sibdatabase.socialfinance.org.uk/>

¹³ <https://www.nao.org.uk/wp-content/uploads/2018/01/PFI-and-PF2.pdf>

¹⁴ <https://www.gov.uk/government/publications/private-finance-initiative-and-private-finance-2-projects-2017-summary-data>

Since PF2 was introduced in 2012 only six projects have been tendered - while just one (in Northern Ireland) is currently in procurement (compared to 32 in 2007 alone)¹⁵. Despite this slowdown in commissioning, the taxpayer will still pay at least £199 billion to honour existing contracts, some of which run into the 2040s, according to the National Audit Office¹⁶.

Closing the PFI transparency gap requires additional thought, because the use of contract values as a threshold to designate PFI suppliers under FOIA would need to be retrospective to be effective. Using transaction data (on future spending) may be more appropriate in this instance.

A growing trend in maturing PFI/PF2 projects is for companies to sell their equity in the SPV. This frequently happens once the construction of the asset - the riskiest phase of the project - is complete and project debt can be refinanced. The total value of PFI equity transactions was £12bn between 1998 and 2012, but had reached £17.1bn by 2016 - a 42.5% increase in less than four years, according to the European Services Strategy Unit (ESSU).¹⁷

The main buyers of PFI equity are infrastructure funds, many of which are registered outside the UK in offshore locations such as Jersey, Guernsey and Luxembourg. ESSU research states that (as of 2016) nine infrastructure funds, all of which were registered offshore, owned a majority stake (50-100 percent) in 334 of the UK's PFI projects (45 percent of all projects)¹⁸.

Given that PFI equity is now owned offshore, there may be issues around where information is 'held' for the purpose of FOIA - as well as jurisdictional compliance issues. The ICO may wish to consider whether a corporation headquartered in Jersey could be subject to the FOIA 2000.

¹⁵ <https://www.gov.uk/government/publications/private-finance-initiative-and-private-finance-2-projects-2017-summary-data>

¹⁶ <https://www.nao.org.uk/wp-content/uploads/2018/01/PFI-and-PF2.pdf>

¹⁷ <https://www.european-services-strategy.org.uk/wp-content/uploads/2017/01/financial-commodification-public-infrastructure.pdf>

¹⁸ <https://www.european-services-strategy.org.uk/wp-content/uploads/2017/01/financial-commodification-public-infrastructure.pdf> p21

Public Service Mutuels

Public service mutuels, according to the government, “are organisations that have left the public sector but continue delivering public services” and in which “employees play a significant role in their operation.”¹⁹ The Coalition government created support for mutuels through the Right to Provide which gave public sector workers “a right to take over and run services themselves as an employee-led mutual.”²⁰

One example is East Coast Community Care CIC, a social enterprise in which 77 percent of its 350 staff are also shareholders. The organisation, incorporated in 2011, provides NHS community health services across Norfolk and Suffolk. The organisation turned over £37m in 2016-17 and has 70,000 registered service users.²¹

According to a 2018 report by Social Enterprise UK for DCMS, an estimated 115 public service mutuels have ‘spun out’ since 2011. The estimated combined turnover of the 115 mutuels is a £1.6 billion, with turnover ranging from £200k to £100m+.²² 76 percent of the mutuels’ income comes from trading with the public sector, with another seven percent generated through government grants.²³ Thus, around four-fifths of their estimated £1.6 billion income is funded through taxation.

These mutuels work in healthcare, social care and education, among other sectors. A mutual is not a legal form and more than half of those surveyed by Social Enterprise UK were incorporated as Community Interest Companies.

Local bodies

¹⁹ <https://www.gov.uk/government/get-involved/take-part/start-a-public-service-mutual>

²⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/215662/dh_128174.pdf

²¹ <http://www.ecch.org/media/16308/ecch-annual-report-2016-17-final.pdf>

²² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/715302/Partnerships_for_Better_Public_Services_2018.pdf

²³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722052/Public_Service_Mutuals_-_State_of_the_Sector_April_2018.pdf

Local authorities are partnering with the private sector in efforts to reduce costs while retaining some control over the governance of outsourced services. Meanwhile, councils are delivering public services on both a for-profit and not-for-profit basis through trading companies. In both cases, the transparency of the public pound is diminished.

While both models predate the Coalition government, it is acknowledged that use of these models increased after years of austerity policies. Tracking the growth of local government alternative delivery models precisely is difficult - and outside the scope of this report - because central government does not maintain public data or records. The examples provided below are illustrative of wider trends. Local authorities also can and do use PbR, PFI and public service mutuals, which are described in the section above.

Joint ventures

Joint ventures are partnerships between a public body and other public, private or third sector bodies, which can be incorporated in a range of forms (such as Limited Company by Shares, Limited Company by Guarantee, or Limited Liability Partnership). There is no central, public data available on joint ventures at the national level, however, the results of a local government survey suggest they are widely used. The think tank Localis reported in 2016 that: "A majority of councils (57%) operate a joint venture with the private sector", according to results from a survey of 150 "key local government figures – including chief executives, leaders, cabinet members and chief finance officers"²⁴.

Many joint ventures are Companies Limited by Shares held by a single council and a large private company. For example, in 2013 Staffordshire County Council and Capita formed a company called Entrust Support Services Limited, which is 51 percent held by Capita and 49 percent by the council²⁵. Entrust provides "school to school support services" for 700 schools and as part of the deal approximately 4,000 council employees were transferred

²⁴ <http://www.localis.org.uk/wp-content/uploads/2016/02/Localis-Commercial-Councils-FINAL.pdf>

²⁵ <https://beta.companieshouse.gov.uk/company/04440463/filing-history>

to the joint venture²⁶. The contract is 20 years long and expected to generate £85m per annum in revenue - a total of £1.7 billion²⁷.

Joint ventures can include multiple public and private sector parties. For example, Southwest One Limited, a joint venture between Somerset County Council, Taunton Deane Borough Council, Avon and Somerset Police, which together held 25 percent of shares, and the contractor IBM, which held the remaining 75 percent, provided ICT, customer contact and other back office services²⁸. The ten year contract, signed in 2007, was reported to be worth £535 million, although Somerset County Council terminated its contract a year before it expired²⁹.

There are also examples of explicitly for-profit joint ventures, such as the Inglis Consortium, a Limited Liability Partnership composed of two private companies and the London Borough of Barnet. The LLP aims to build and sell more than 2000 houses on brownfield sites in Barnet - with the borough entitled to 13.9 percent of future profits.³⁰

²⁶ <https://www.bbc.co.uk/news/uk-england-stoke-staffordshire-20604842>

²⁷ <https://www.computerworlduk.com/it-vendors/capita-closes-in-on-17bn-deal-with-staffordshire-county-council-3413542/>

²⁸ <https://beta.companieshouse.gov.uk/company/06373780/filing-history>

²⁹ <https://www.bbc.co.uk/news/uk-england-somerset-35039696>

³⁰ <https://beta.companieshouse.gov.uk/company/OC361803>

Local Authority Trading Companies

Local Authority Trading Companies (LATCs) are companies which are wholly owned by a local authority but have the freedom to trade as a commercial company (provided by the Local Government Act 2003 and the Localism Act 2011). Research by the think tank Localis suggests LATCs are widely in use: "More than half of councils (58%) own a trading company, and at the rate it is increasing, full coverage by 2020 is a possibility"³¹.

LATCs are prevalent in the social care sector. A report in the Guardian states: "It is estimated that about 20 social care LATCs are now trading in England and Scotland, with many more in the pipeline."³² Notable examples of larger social care LATCs include Norse Group and Essex Cares Limited, which are owned by Norfolk County Council and Essex County Council respectively. In 2015, Dorset, Bournemouth and Poole councils created the Tricuro group of companies, which they collectively own, to provide adult social care services to the county of Dorset. In 2017-18 Tricuro turned over £41.4m.

LATCs come in different shapes and sizes. In 2015, Knowsley Metropolitan Borough Council created a limited company by guarantee called Volair. It has a 15 year contract to operate the council's leisure facilities on a "not for profit basis" - on which future surpluses are reinvested in the community - and reported a turnover of £5.3m in its first year of trading³³.

Academies

Academies were introduced by the Blair government as a tool to improve failing schools in England. The Coalition and May Governments increased the conversion of schools to academies dramatically. Academies receive funding directly from central government and are operated by charitable trusts. There were 203 academies in 2010, but today 32 percent of all 21,950 primary, secondary, special, and pupil referral unit schools

³¹ <http://www.localis.org.uk/wp-content/uploads/2016/02/Localis-Commercial-Councils-FINAL.pdf>

³² <https://www.theguardian.com/social-care-network/2015/oct/14/could-local-authority-trading-companies-save-social-care>

³³ <https://beta.companieshouse.gov.uk/company/09910942/filing-history>

are now academies, which represents a huge shift of service provision out of the public sector.³⁴ The government made academies subject to FOIA by virtue of the Academies Act 2010, which is a notable example of the expansion of FOIA to bodies delivering services outside of the traditional public sector.

3. Health and social care

More than £10 billion per year is now spent on non-NHS providers of healthcare. The use of private contractors began under New Labour and significantly increased during and after the Coalition government.

Table 2.1 shows annual spending across the Department of Health and Social Care and the NHS on non-NHS bodies.

Table 2.1 - Annual spending by Department of Health and Social Care and NHS on non-NHS bodies

Body	2014-15 (£m)	2015-16 (£m)	2016-17 (£m)	2017-18 (£m)
Independent Sector Providers	8067	8722	9007	8765
Voluntary Sector	527	641	757	1564
Local Authorities	1774	2869	2909	2737
Devolved Administrations	no data	no data	73	43
Total spend on non-NHS bodies	10367	12232	12746	13109

Sources: Table 36, Department of Health and Social Care annual report and accounts 2017-18³⁵ and Table 10, Department of Health annual report and accounts 2015-16³⁶

³⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/666871/Ofsted_Annual_Report_2016-17_Accessible.pdf#page=31

³⁵ <https://www.gov.uk/government/publications/dhsc-annual-report-and-accounts-2017-to-2018>

The majority of NHS spending is now commissioned by Clinical Commissioning Groups (CCGs) and local authorities following sweeping reforms to the NHS. The Health and Social Care Act 2012 localised responsibility for commissioning and introduced greater competition into the delivery of services. 195 CCGs, composed of local GPs and other health professionals, now have primary responsibility for commissioning health services that meet “reasonable local needs”. Collectively CCGs are responsible for about two thirds of the DHSC’s £120 billion budget.

Despite this responsibility, CCGs are exempt from the requirements to publish data on their transactions, so there is no way to monitor their spend with external organisations. However, according to the DoH accounts spent £63.1 billion of their £81.3 billion budget with NHS Foundation Trusts in 2017-18³⁷.

The Care Act 2014 established the Better Care Fund, which requires local authorities and CCGs to pool some of their budgets to deliver integrated care. In 2017-18 these organisations pooled a total of £7.3 billion³⁸ and this figure is expected to grow in the coming years. This money is spent individually via local authorities and CCGs, which are mandated to work together.³⁹

Local authorities are also now responsible for providing or commissioning a range of services including alcohol and drug misuse services, public health services for children and young people aged 5-19, public mental health services, and a range of local initiatives to promote healthy lifestyles⁴⁰.

Personal Health Budgets

³⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/539602/DH_Annual_Report_Web.pdf

³⁷https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728780/Department_of_Health_Annual_Report__Accounts_Web_Accessible_NEW.pdf

³⁸https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728780/Department_of_Health_Annual_Report__Accounts_Web_Accessible_NEW.pdf

³⁹ <https://www.kingsfund.org.uk/publications/health-wellbeing-boards-explained>

⁴⁰https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216712/dh_131901.pdf

In 2007 the government introduced the personal health budget: a sum of money allocated directly by a local authority to an adult with residential social care needs. The personal health budget can be managed by the local authority, a third party, or directly by the recipient. In the latter direct payment model, public money flows from the local authority to the service recipient who then spends it with their provider of choice - from the public, private or third sector. To monitor Personal Health Budget spending local authorities will need to compile statistics on the use of direct payments with suppliers but there appears to be no central policy on whether and how to do this.

The Care Act 2014 expanded the use of personal health budgets by mandating local authorities to provide personal health budgets to all eligible adults with both residential and community care needs⁴¹. As of April 2018, more than 23,000 people were receiving personal health budgets, and although there is no public data on the costs of the scheme, the provision of weekly professional care is not cheap. The government intends to expand PHBs further. They are contained within the Five Year Forward View⁴² - while a government consultation which proposed expanding personal health budgets to up to 350,000 people closed in June this year⁴³. It is feasible that a significant amount of public funding for social care will be spent through direct payments in the near future.

Conclusion

Public service delivery has grown more complex and more reliant on groups of private companies working in supply chains. This introduces opacity about where information is held and raises questions about which subcontractors should be considered for designation under FOIA. While PFI commissioning has slowed, existing liabilities create a transparency gap worth more than £10 billion per year.

⁴¹ <https://www.nao.org.uk/wp-content/uploads/2016/03/Personalised-commissioning-in-adult-social-care-update.pdf>

⁴² <https://www.england.nhs.uk/wp-content/uploads/2017/03/NEXT-STEPS-ON-THE-NHS-FIVE-YEAR-FORWARD-VIEW.pdf>

⁴³ <https://consultations.dh.gov.uk/commissioning-integration-and-transformation/extending-rights-to-personalised-budgets/>

At the local level, the lines between public and private sector service delivery have blurred as local authorities enter joint ventures with private companies and some start to trade on for-profit and not-for-profit bases. However, this growing area of quasi-commercial activity is removed from public scrutiny offered by the FOIA.

The transparency of NHS commissioning has been reduced by the creation of CCGs, and the lack of transparency around their spending, while the use of Personal Health Budgets, changes the basis on which subsidised social care is provided. These changes make it impossible to effectively track how public money is being spent on healthcare.

Threshold analysis

The ICO asked Spend Network:

“To identify a possible appropriate monetary threshold for designation of government contractors and any other alternative or complementary methods that may be appropriate for identifying contractors for designation under the legislation.”

Spend Network analysed the potential impact of three thresholds

1. Contract value
2. Contract duration
3. Transaction value

Contract value

Under this threshold the signatories of contracts which have a value greater than a specified limit would be designated as public authorities under s5 FOIA 2000.

To explore the use of contract value as a threshold, Spend Network analysed a sample of 156,359 contract notices published since 2014 that were gathered from over 3,000 different publishers, and published in more than 70 different sources, including contracting portals and open data returns published by public bodies.

Spend Network identified 121,230 contracts that were published, with a value, and this data was divided into five thresholds as follows:

Table 3.1 - Contracts by value threshold

	Total contracts	Total %	Cumulative count	Cumulative %	Total spend	Contract value
>10,000,000	5,695	4.7%	5,695	4.7%	£ 1,054,280,630,148	48.8%
5,000,000 - 10,000,000	3,258	2.7%	8,953	7.4%	£ 23,692,043,402	1.1%
1,000,000 - 5,000,000	13,207	10.9%	22,160	18.3%	£ 30,270,106,409	1.4%
500,000 - 1,000,000	9,032	7.5%	31,192	25.7%	£ 6,677,283,267	0.3%
<500,000	90,038	74.3%	121,230	100.0%	£ 1,044,580,419,370	48.4%
total	121,230	100%			£ 2,159,500,482,595.95	100%

The data suggests that contracts worth more than £10m account for 4.7 percent of the account by volume but 48.8 percent by value. Concerns remain about the quality of this data, EU procurement rules require buyers who exceed contract values by 20% or more to re-tender their contracts, so there is a powerful incentive to over value contracts and thereby avoid the prospect of retendering.

2. Contract duration

Under this threshold the signatories of contracts which exceed a specified duration would be designated as public authorities under s5 FOIA 2000.

Spend Network used the same sample of 156,359 contracts to explore contract duration. In this case, just 79,810 (51%) contracts were published with enough information to determine the length of the contract. We grouped the contracts that had valid duration values into 11 bands.

Table 3.2 shows the distribution of these contracts by their length and value.

Table 3.2 - Distribution of contracts by length and value

	total contracts	total %	cumulative count	cumulative %	total spend	contract value
10+	467	0.6%	467	0.6%	£ 96,680,301,156	16.1%
8yrs - 9yrs	333	0.4%	800	1.0%	£ 9,137,617,666	1.5%
7yrs - 8yrs	182	0.2%	982	1.2%	£ 3,081,522,478	0.5%
6yrs - 7yrs	316	0.4%	1298	1.6%	£ 6,685,321,660	1.1%
5yrs - 6yrs	915	1.1%	2213	2.8%	£ 20,765,127,197	3.5%
4yrs - 5yrs	1691	2.1%	3904	4.9%	£ 30,827,706,816	5.1%
3yrs - 4yrs	5348	6.7%	9252	11.6%	£ 42,769,492,028	7.1%
2yrs - 3yrs	8126	10.2%	17378	21.8%	£ 251,473,685,047	42.0%
1yrs - 2yrs	24680	30.9%	42058	52.7%	£ 123,752,061,373	20.7%
< 1yrs	37750	47.3%	79808	100.0%	£ 13,542,537,546	2.3%
total	79808	100%			£ 598,715,372,966.58	100%

The data suggests that contracts which are 2-3 years in length account for 10 percent of the total by volume but 42.0 percent by value. A threshold of five years would capture 4.8 percent of contracts by volume but 27.8 percent by value. A threshold of two years would capture 21.8 percent of contracts by volume but 77 percent by value.

3. Transaction value

Under this threshold government suppliers who receive revenue above a specified level would be designated as public authorities under s5 FOIA 2000.

To study this threshold, Spend Network used a sample of the 1,000 largest suppliers to government (excluding large, publicly owned companies) for the period October 2013 to March 2018. The data accounts for a total of £130.4 billion of spending at an average of £28.9 billion per year [JH5]. We grouped the 1,000 suppliers into eight bands based on their average annual income.

In the top band, of £100m and above, is a group of 62 large companies such as Capita, Carillion and Capgemini that collectively process more than half of all spending in the sample. In the lowest band, of £2.5m and below, earnings were just 2% of the cumulative value in the highest band. In the lowest band, there were 147 businesses in a wide range of sectors including recruitment, real estate and social care.

Table 3.3 shows the distribution of suppliers and their average annual revenues by band over the full period.

Table 3.3 - Distribution of suppliers and their average annual revenues by band

Band	Supplier count	Cumulative supplier count	Cumulative supplier count %	Average annual revenue in band	Revenue in band %	Cumulative revenue in band (%)
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>100,000,000	62	62	6.2	£ 14,724,127,066	50.8	50.8
75,000,000 - 100,000,000	25	87	8.7	£ 2,202,979,502	7.6	58.4
50,000,000 - 75,000,000	44	131	13.1	£ 2,701,185,696	9.3	67.7
25,000,000 - 50,000,000	107	238	23.8	£ 3,888,859,184	13.4	81.1
10,000,000 - 25,000,000	185	423	42.3	£ 3,001,793,434	10.4	91.5
5,000,000 - 10,000,000	181	604	60.4	£ 1,282,993,559	4.4	95.9
2,500,000 - 5,000,000	249	853	85.3	£ 900,955,885	3.1	99
<2,500,000	147	1000	100	£ 290,353,733	1	100
Total	1000	-	-	£ 28,993,248,058.44	100	-

Setting a threshold at £10m and above would affect 42.3 percent of companies and capture 91.5 percent of transactions by value. It would also place almost no additional burden on small companies, which are defined in the Companies Act as having less than £10.2m in revenue.

SMEs

In determining an appropriate threshold, the ICO needs to capture as much of government's net spend with suppliers as possible, without unduly burdening SMEs.

The Companies Act 2006 defines small and medium businesses as those with annual revenue of less than £10.2m and £36m respectively (while also evaluating balance sheet and staffing criteria)[1].

One option could be to set a robust threshold (whether based on contract value, duration of transactions) that captures a high proportion of government spending, and then simply exempt small and/or medium businesses.

Central government direct and indirect spending with SMEs is monitored and would provide a statistical basis to assess the size of the 'SME transparency gap' that would be created through exemption.

There would be a number of issues to consider, however, including that of subsidiaries. In Spend Network's data on the 1000 top suppliers, for example, there are numerous companies that earn under the small business revenue threshold but that belong to larger corporate groups. Examples include E.ON Energy Solutions Ltd, Carillion Services Ltd and Reed Employment Ltd.

Effect of spend thresholds

Spend Network added a sector analysis of top suppliers, ordered by spend and volume of contracts in Tables 3.4 and 3.5 below. These tables show not only who the key players are but who the likely target for requests for information are likely to be and whether or not these suppliers are delivering services on behalf of the public. For instance, local government service providers are more likely to provide frontline public services, and are more likely to trigger FOI requests from citizens.

Spend Network Suppliers with an annual spend in excess of £300m by sector:

Table 3.4 - Suppliers with average annual spend over £300m by sector, by value

Supplier name	Central Government	Local Government	NHS	Devolved Government	Public Corps	Grand Total
CARILLION CONSTRUCTION LIMITED	£804,110,673	£97,430,472	£21	£34,244,814		£935,785,981
TELEREAL TRILLIUM LIMITED	£793,354,889	£601,163			£20,303	£793,976,355
COSTAIN LIMITED	£582,286,698	£85,233,635		£45,591,359		£713,111,692
SERCO LIMITED	£392,749,780	£230,507,313	£31,106,491		£42,330,889	£696,694,473
ENTSERV UK LIMITED	£659,908,752	£5,082,904	£2,831,980			£667,823,636
ATOS IT SERVICES UK LIMITED	£513,267,554	£3,528,105	£1,436,602	£38,281,551	£23,060,352	£579,574,164
CAPGEMINI UK PLC	£520,030,920	£26,801,112	£85,953	£11,668,169	£462,857	£559,049,011
FUJITSU SERVICES (ALCEDO) LIMITED	£486,677,922	£34,143,795	£15,070		£457,638	£521,294,424
ASPIRE DEFENCE LIMITED	£495,371,009					£495,371,009

IBM UNITED KINGDOM LIMITED	£418,503,089	£33,625,619	£196,240	£34,258	£2,092,954	£454,452,161
KIER HIGHWAYS LIMITED	£379,522,724	£72,596,462				£452,119,185
CSC COMPUTER SCIENCES LIMITED	£399,398,439	£8,339,533	£27,990,363			£435,728,335
EDF ENERGY CUSTOMERS PLC	£406,733,909	£6,202,512	£11,139,824		£2,265,552	£426,341,795
FIRMSTEP LTD	£18,916	£381,426,800				£381,445,716
RINGWAY JACOBS LIMITED	£69,543	£370,756,047				£370,825,590
ATKINS LIMITED	£263,767,778	£94,825,176	£265,384	£211,055	£359,665	£359,429,058
BALFOUR BEATTY RAIL LIMITED	£283,827,622	£75,000,342				£358,827,964
WILLMOTT DIXON CONSTRUCTION LIMITED	£13,118,162	£331,586,681	£7,136,820			£351,841,663
BRITISH ENERGY DIRECT LIMITED	£349,353,121					£349,353,121
BAE SYSTEMS SURFACE SHIPS LIMITED	£347,587,975	£171,429				£347,759,404
COMENSURA LIMITED	£1,040,942	£338,188,385	£5,101,090			£344,330,417

NHS PROFESSIONALS LIMITED			£330,315,713			£330,315,713
BT GROUP PLC	£322,810,202	£7,333,557				£330,143,759
KIER CONSTRUCTION LIMITED	£68,292,485	£205,613,631	£49,905,930		£10,370	£323,822,415
SKANSKA CONSTRUCTION UK LIMITED	£163,304,937	£156,953,415				£320,258,352
BAM NUTTALL LIMITED	£272,735,873	£38,673,117		£4,333,911		£315,742,902

Table 3.5 - Suppliers with average annual spend over £300m by sector, by volume

Supplier	Central Govt customers	Local Govt	NHS	Devolved Govt	Public Corps	SUM of customers
CARILLION CONSTRUCTION LIMITED	11	57	1	1		70
TELEREAL TRILLIUM LIMITED	13	10			1	24
COSTAIN LIMITED	9	17		1		27
SERCO LIMITED	27	130	18		3	178
ENTSERV UK LIMITED	12	4	9			25
ATOS IT SERVICES UK LIMITED	34	44	11	2	4	95
CAPGEMINI UK PLC	23	24	3	1	1	52
FUJITSU SERVICES (ALCEDO) LIMITED	28	32	2		2	64
ASPIRE DEFENCE LIMITED	1					1
IBM UNITED KINGDOM LIMITED	40	112	7	1	5	165

KIER HIGHWAYS LIMITED	2	19				21
CSC COMPUTER SCIENCES LIMITED	14	39	87			140
EDF ENERGY CUSTOMERS PLC	9	72	18		3	102
FIRMSTEP LTD	3	51				54
RINGWAY JACOBS LIMITED	1	25				26
ATKINS LIMITED	33	142	6	1	1	183
BALFOUR BEATTY RAIL LIMITED	3	3				6
WILLMOTT DIXON CONSTRUCTION LIMITED	6	89	4			99
BRITISH ENERGY DIRECT LIMITED	1					1
BAE SYSTEMS SURFACE SHIPS LIMITED	5	1				6
COMENSURA LIMITED	2	72	2			76

NHS PROFESSIONALS LIMITED			31			31
BT GROUP PLC	2	10				12
KIER CONSTRUCTION LIMITED	14	86	29		1	130
SKANSKA CONSTRUCTION UK LIMITED	3	26				29
BAM NUTTALL LIMITED	9	40		1		50

Limitations of the data

Although we have been able to use Spend Network's extensive data set, we remain concerned that the published data lacks either sufficient detail or sufficient accuracy to be wholly confident of where a threshold for inclusion in FOIA should apply.

Both the spend data and the contract data have been linked to Companies House records by Spend Network on a 'best efforts' basis. Subsequently it is likely that not all possible matches have been made and that some suppliers have been in receipt of more payments or contracts.

We are particularly concerned about the quality of the contract data, the majority of which lacks data on either duration or value. We are also concerned that there is a strong incentive for buyers to inflate the value of their published contracts, as this data is used as the baseline measurement from which overspending is calculated. Under EU legislation, should a buyer exceed the value of a contract by 10% then the buyer must publish a notice stating that the budget has been exceeded to the EU tendering portal TED (<https://ted.europa.eu>). Should the buyer exceed the value of the contract by 20% then it is necessary for the contract to be retendered.

The threat to re-tender a contract likely influences buyers to publish inaccurate data. This is particularly true of framework contracts that are made available to large numbers of buyers and where it can be very difficult to project the likely use of the framework during its lifetime.

It is important to note that whilst the poor data impacts the report, the quality of the published data, specifically the contract data, provides a good illustration of the transparency gap in action. With so little viable data on contracting it is hard to know precisely where the transparency gap exists and subsequently how to ensure that FOI provision is maintained.

Conclusion



It is possible that some combination of thresholds may be used to designate suppliers under FOIA. For example, where a supplier maintains an average revenue above a certain threshold, calculated over the preceding three or more years, and/or a supplier holds contracts above a certain value or over a certain duration.

This option to apply multiple thresholds is common for suppliers. For instance Companies House applies multiple thresholds to the requirement to submit full or abbreviated accounts. In the same way, applying a threshold on the average volume of revenue for suppliers, as well as on contracts above a certain value or duration threshold, would allow for a sophisticated mechanism by which a threshold is applied.

The largest suppliers, would be captured, even if they do not have contracts in excess of the threshold, but some providers, who may have a large contract with one public body, but may not have a particularly significant portfolio of contracts across the Government would also be captured on a contract by contract basis.

Some care needs to be taken to manage the threshold in the use of framework contracts, deploying it only on the agreements with individual buyers following a further competition under the framework.

However, a multiple threshold strategy can only be adopted if there is a significant improvement in the publishing of contract data. At the current time, it is hard to rely on the published values of contracts, very few contracts let underneath frameworks are published, especially by the wider public sector. Successful publishing of these contracts will need to link back to the original framework contract, so that the whole purpose and nature of a contract can be known.

<https://www.legislation.gov.uk/ukpga/2006/46/section/465>; <https://www.legislation.gov.uk/ukpga/2006/46/part/15/chapter/1/crossheading/companies-subject-to-the-small-companies-regime>

Transparency clause analysis

The ICO asked Spend Network:

"To assess the take up and success of standard transparency clauses in contracts, and how well this is working in practice to help the public to access information about contracts with the public sector.

This should include illustrations of a range of contracts, both local and central government, illustrating good and bad transparency practices. Again, this need not be exhaustive but it should help the Commissioner evidence that the "light touch" approach advocated in the 2015 discussion "roadmap" document has not worked effectively enough."

Spend Network proposed to analyse a sample of 60 relevant contracts to assess whether and to what extent standard transparency clauses have been adopted, particularly after the introduction of the government Model Services Contract.

The Model Services Contract

The Model Services Contract (MSC) is a best practice document published by the Crown Commercial Service (CCS), which public bodies are advised but not obliged to use when procuring services with a value of above £10m. In May 2016 a clause, titled Transparency and Freedom of Information (henceforth the 'transparency clause') was added to the MSC.

To assess implementation, Spend Network first attempted to obtain contracts with a value of above £10m and review whether the transparency clause was used. After conducting rigorous searches across UK public procurement portals we established that there are no published contract documents that contained the 'transparency clause'. These specifications were: open and accessible contracts that did not require

registration or a procurement portal and/or subscription to the tender of value above £10m, published after May 2016.

We then consulted the CCS, which confirmed it does not monitor the usage or implementation of the MSC. As proposed, Spend Network consulted informally with relevant contacts in government, research organisations, and public law experts. Without exception, none of these people had worked with or heard of an organisation using the MSC.

Spend Network has determined there is no evidence on which to review the success or failure of the MSC. We informed the ICO of this in late August 2018.

Wider practices of transparency in procurement portals

To assess the take up and success of other transparency clauses in contracts, Spend Network gathered a sample of contracts and other documents associated with tendering from three procurement portals: Contracts Finder, Due North and G-cloud.

To obtain our sample of contracts, we gathered documents in any case when there was a url link to a document attached to the open portal at the time we looked at it. We converted any document we found into pdf that was not already in this format and manually sorted them into six categories:

- Final contracts
- Sample/template contracts
- Terms and conditions
- Copyright and Intellectual Property documents including Non-Disclosure Agreements
- Specifications and requirements
- Procurement process documents (e.g. Invitations to Tender, Pre-Qualification Questions, adverts and award letters)

From circa 43,000 tenders and contract notices published after May 2016, we identified almost 500 tenders

with documents. From these 500, we found 55 final contracts, yielding a contract publish rate of 11.16%.

At first glance, this appears remarkably low. However the rationale behind our methodology was to assess the data through the lens of transparency, looking at publicly available data. This means that we obtained readily available documents accessible without the need to log into portals, link to another portal and/or subscribe to content.

That we could not find final, signed contracts that are openly accessible does not mean these do not exist. Inevitably there would be other documents available if we were logged in; contract documents from specification to final award notices are often published behind logins and/or a subscription ('register interest') in order to access the documents.

Therefore the data at our disposal is not collectively exhaustive, not meant to be collectively exhaustive and should not be treated as such. The purpose of the analysis for this question is not to assess whether contracts are published but to assess, for publicly available information, how transparent the data is. The issue our analysis seeks to address is to assess the ease with which a lay member of the public can, through publicly available information, identify whether a contract is subject to FOI or similar open information clauses such as the MSC. If a member of the public needs to register for one or more portals and/or subscribe then this is not considered to be ease of access for the purpose of our study.

Web portals for procurement documents often require a) registration and/or b) subscription. Without one or even both, documents are not available for users to see. Given the inherent scope of our research, these documents are not included in our analysis. This is why the sample size is reduced from 43,000 to 55.

Assessing transparency in contracting

Spend Network then manually inspected these 55 final contracts with the aim of observing the use of different transparency and Freedom of Information Act clauses, as well as the use of restrictive clauses such as those concerned with intellectual property and copyright.

There is no systematic publishing of the agreed contract documents in the public sector, despite guidance to the contrary. What data we found were proposed contracts and not actual agreed contracts. The sample we created was extremely small and not representative but instead, it reflected the proactive transparency bias of the publishing organisations. Moreover, many contracts are published in a redacted format which makes it difficult to understand the deal in full context.

Spend Network proceeded to inspect the contract documents to explore their research value. However, it soon emerged that an analysis of the documents could not be depended upon as a robust source for research. The large majority of them are Call Off Contracts published by the Crown Commercial Service (CCS), and therefore not representative of any wider trends, while a substantial number were also published by the MoD. Both sets of documents included clauses on FOIA and transparency, but did not include the MSC.

Spend Network identified a handful of examples of proposed DEFRA, DfID and the DfE contracts using the FOIA clauses. These have been reproduced below with full contracts in the annex. Interestingly, both DfID and DfE used clauses that extend FOIA to cover subcontractors. There are instances where public bodies did not use a FOIA clause, including the DfE (in a different contract) and Cambridge University.

However, from the small sample of those contract documents that Spend Network was able to analyse, there appears to be no indication of the existence of a signed and ratified agreement wherein the parties specified that information would be held on behalf of a public authority in the event of a Freedom of Information request. The absence of any examples of these or the MSC, alongside a very small sample showing inconsistent use of FOIA principles makes it impossible to know if the MSC is in use.

We would conclude that it is extremely likely that it is not in use. Nonetheless, an inherent contradiction exists: entities are encouraged to put a transparency clause within the contract yet, as previously noted, there is no systematic publishing of contract documents, so even if the MSC were in extensive use, it would be impossible to determine where it was being used. As such, it would be an open clause in a closed system, effectively defeating the purpose of having an open clause in the first instance.

Purchasing entity analysis

The ICO asked Spend Network:

"To identify key organisations other than contractors that are not covered by the FOIA, the EIR or both but which nevertheless may carry out work that may be described as a "public function"."

After further consultation with the ICO, Spend Network explored whether there was evidence of buyers that were not covered by FOIA which were providing public services.

To investigate Spend Network analysed a list of 19,943 names of entities that had published a total of 1,139,044 tenders using one of the UK's tender portals in the last four years.

Using matching algorithms Spend Network were able to cluster this down to 17,159 names. We then classified a sample of 481,726 (42%) of these tenders using a system of rules based classification (e.g. all bodies with NHS in the name were classified as Health) and manual classification.

Row Labels	Tenders published
Local Government	270,805
Education	38,390
Health	37,966

Central	36,647
Companies	29,928
Housing	20,226
Devolved	19,566
Purchasing	12,812
Unclassifiable	12,171
Utilities	1,801
Emergency	1,414
Grand Total	481,726

Table 5.1 Total numbers of tenders published by sector.

During this classification process Spend Network looked at the nature of the buyers and sought to identify whether their operations were covered by the FOIA.

Our analysis identified three groups of buyers that were currently exempted from FOIA legislation: Housing Associations, Companies (excluding publicly owned corporations) such as Babcock and purchasing consortia such as YPO Administrative Solutions Ltd.

These three groups represent 5.6% of the total number of tenders let by public bodies, with the Companies category representing the largest volume of published tenders, some 2.6% of the total number of tenders.

Housing Associations represented 1.4% of the total volume of tenders, and are clearly providers of public services, despite becoming private companies or charitable trusts (and often both).

Housing Associations were the most easily identifiable group, for instance Fusion21 had published nearly 900 tenders in the previous three years. A review is needed with regards to whether FOIA ought to apply to these organisations, since they provide a public service, handle public money and many were once part of local government.

Purchasing consortia are a small group that fulfil a distinct role in procurement, most are set up as companies with a joint ownership structure based on the authorities that are members of the consortium. We identified a lack of clarity over purchasing consortia. ESPO for instance was found, through WhatDoTheyKnow.com, to be FOIA accessible. However, others such as UK Shared Services, YPO Administrative Solutions and Black County Business Ltd. were listed on their website as being publicly owned and therefore, in theory, to be FOIA accessible but there is no evidence on WhatDoTheyKnow.com of any receipt of FOI requests in spite of their involvement in tenders. South East Consortium Ltd is listed as a not-for-profit organisation meaning that its status as a public/private entity and thus its status under FOIA is unclear. A procurement consultancy is also listed (Litmus Partnership Ltd) but it is unclear from the data and research what their status is: whether the tenders they have been involved in are duplicates of public organisations under FOIA's remit or they have been solely involved in handling public money.

Other entities where there was uncertainty about whether FOIA 2000 applied to the organisation appeared to be limited companies owned by universities. Whilst universities may also have external revenue streams such as research or consulting, clarity is needed to understand the exact status of these enterprises.

With regards to organisations that are not public authorities and which will not therefore be covered by the FOIA, the EIR or both, the picture is complex. There are two reasons for this: we cannot know which legal entity might be deployed to deliver services. For instance University College London is a university that appears to have several businesses, a hospital, a teaching hospital and a charity; so when a contract is let or awarded to "UCL Ltd" it may be provided to an organisation that is a publicly owned company and should

therefore be subject to FOIA, but it is not possible to know the precise legal status of the organisation and whether or not FOIA is applicable. For private companies, the picture is more complicated still: their organisation structure can be much more complex than Companies House might show.

Second, FOIA's remit is very narrow. An organisation might be providing a public or quasi public service, but in order for it to fall under FOIA, an organisation needs to be checked to ensure that it is a public authority in line with the criteria outlined in Sections 3 and 6 of the FOIA 2000. This process of verification can be complex as the legal status of different legal entities is not immediately available and sometimes yields inconclusive results. For instance, it is not possible to know whether a company is owned by a public entity from Companies House data.

Since 2018 companies with contracts that exceed £5m in value that subcontract more than £100,000 of that contract are required to publish opportunities and contract award notices to Contracts Finder.⁴⁴ It is not possible to know whether these contracts can all be defined as the provision of public services but it seems likely that much of this work is for the provision of a public service.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698482/PPN_0118_Contract_Condition_for_Subcontracting__Supply_chain_spend_on_CF_final_.docx.pdf

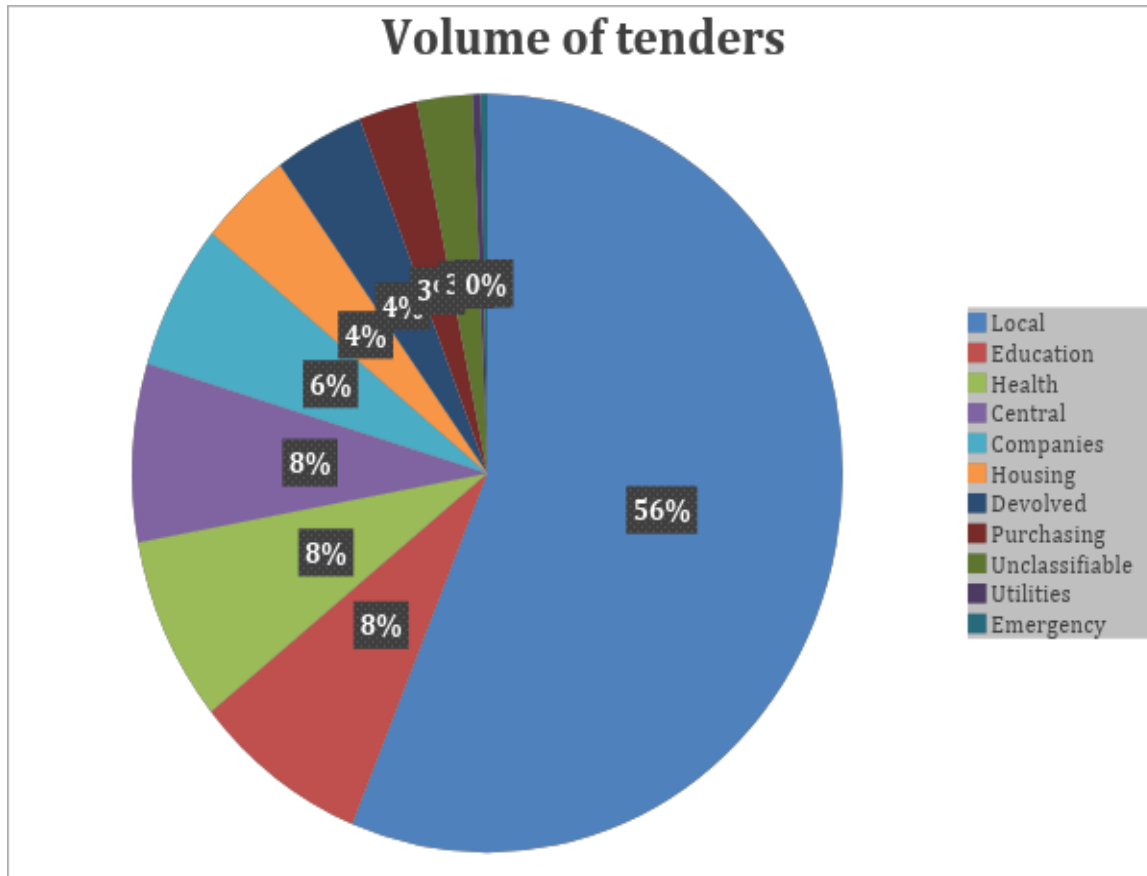


Fig 5.1- Volume of tenders by buyer type

Spend Network recognise that this analytical approach is not a perfect approach to identifying gaps in the application of the FOIA, for instance, the tender data is insufficiently robust to extract the proposed value of any subsequent contract. Equally, because the data is poorly structured it was hard for Spend Network to classify the data, despite large amounts of manual classification work being done, we were only able to categorise 42% of the total data.

Despite these concerns, Spend Network believe that this data does provide a useful proxy for procurement activity and clearly demonstrates that there are bodies providing services on behalf of the public sector that are not currently covered by the FOIA. It does not, however, allow us to quantify the scale of the challenge, or to clearly identify a list of bodies, or groups of bodies that are definitively exempt from FOIA 2000.

Challenges:



Thus the research shows that there is a transparency gap when it comes to FOIA remit, and certainly in the case of Housing Associations, this gap is both emphatic and clear. However, in other cases the challenge is systemic and less clear, owing to the inability to link each purchaser to a legal record and to be able to determine what or who owns each entity.

Our attempt to tightly define where there is a transparency gap was complicated by two reasons: first there are no formal identifiers for all the organisations that buy goods and services, in large part because there is only a nascent set of registers of public organisations⁴⁵, which is not used in procurement publication, nor are they backed up by legal documentation, and statute governing the creation of public entities.

Second, although an analysis of Companies House is possible, precise accuracy with regards to the legal status and even the existence of organisations eludes scrutiny. Even high profile organisations can have numerous entities that span across public service functions, such as University College London, but it isn't easy to know who owns these companies, in particular whether they are wholly owned by a public body, and thereby subject to FOIA.

Therefore can be no canonical list of bodies that are subject to FOIA 2000, either as a comprehensive register of entities, or as a list that uses characteristics of other registries to compile a working list of entities that are subject to FOIA.

Conclusion:

Spend Network's analysis of the data clearly shows that public tendering by bodies not covered by FOI is taking place, in the case of Housing Associations, it is irrefutable that these contracts are for the provision of public services. In the case of Purchasing Consortia, there is a strong argument to say that these organisations are also providing a public service, however, they do not provide a service to the public and so

⁴⁵ <https://www.registers.service.gov.uk>

it could be argued that the need for transparency is less pressing. Finally, in the case of companies that undertake tenders, it is likely that much of this work is for the provision of public services.

However, Spend Network cannot quantify those gaps. Without better data on publicly owned companies and on the legal status of public entities, it is not possible to build a canonical, exhaustive list of organisations that are subject to FOIA.

Recommendations:

There is a transparency gap, in some cases it is clear that it exists, but in many cases, it is not always clear who exactly the organisations are because the data quality is poor. These issues can, to an extent, be addressed. To do so, it is recommended for the national registers to be implemented and used in contracting data and, for each government entity from departmental level downwards, to publish a full, open and accessible chart of the legal status of all of the entities owned by each public body, as some organisations possess substantial subsidiaries whose relationship with FOI are not clear.

Data and Methodology

The Data

Transactions: Monthly spend statements

We collected monthly spend statements from publishers in central and local government as well as the NHS. Due to the scale of the data and some of the quality of the early spend files, we selected a time period of four and half years for the total spend analysis, as this gives the most amount of accurate data that can be processed. The data includes details of individual payments to beneficiaries. In line with the transparency requirements, our analysis covers:

- For local government - transactions over £500
- For central government and NHS - transactions over £25,000

Some central government and NHS authorities publish spend below the £25,000 threshold at their discretion. We include this where available. To manage this extensive dataset we restricted our analysis to the top 1,000 largest suppliers.

Tenders: Tender notices from across the UK public sector

This analysis uses open data published on tenders. Spend Network gathered data from a wide range of public tender portals, including Contracts Finder, TED and regional portals for local government, NHS and education. We gathered data from over 100 portals in the UK. Our tender data extends for the last four years and contains 9,500,445 tender notice records from the UK.

Contracts: Contract award notices from across the UK public sector

This analysis uses open data on contract awards, as published on public sector portals including Contracts Finder, TED and the London Tenders Portal. During this process we also gathered the tender specifications and proposed contract terms published by buyers where available.

Categorisation

We categorise the transaction data using a series of algorithms based on four step process as follows:

1. identify if any categorisation data is available at source;
2. manually classify records based on the nature of supply (e.g. Schools are listed as Education);
3. take data links to Companies House data and use the published SIC codes and;
4. use machine learning to project classifications based on existing learning data.

We use the Proclass⁴⁶ classification system, a procurement classification owned and developed by local government that is increasingly being used in central government. The tender and contract data categorisation uses the Common Procurement Vocabulary codes⁴⁷ (CPV).

⁴⁶ <http://proclass.org.uk>

⁴⁷ <https://simap.ted.europa.eu/cpv>

Issues with the data

Transaction data quality

This analysis used open data as published by public authorities in the UK and so is limited by the data that can be accessed. Sometimes the factors affecting value and volume are not recorded in the data.

Reasons for these variations in volume and value can include one off needs, annualised payments, and buying out of contract. Within the NHS, only Trusts, SHAs and PCTs are covered by the requirement to publish data on transactions. CCGs are not specifically covered and very few publish any data.

The £25,000 threshold for central government and NHS means that many low value transactions are not included in their spend data.

Our transaction data for 2018 is still incomplete. We have included data up to March 2018. However, there are some notable omissions. The Home Office has published no 2018 data. We have referred this to the Information Commissioner.

Contract data quality

Contract data is often missing data fields including buyer names, supplier names, dates, values and categories. This is due to issues in the source data. Data publishers often do not publish robust contract data despite the requirement to do so.

For each piece of analysis, we have used what is available and excluded zero or blank values (null values). The result of this is the data between metrics is not comparable, but is the best possible reflection of what is available.

Even when present, the contract value data can be unreliable. This is because values are often inflated by data publishers to avoid the appearance of overspend. We are particularly concerned about the quality of the contract data, the majority of which lacks data on either duration or value. We are also concerned that there is a strong incentive for buyers to inflate the value of their published contracts, as this data is used as the baseline measurement from which overspending is calculated. Under EU legislation, should a buyer exceed the value of a contract by 10% then the buyer must publish a notice stating that the budget has been exceeded to the EU tendering portal TED (<https://ted.europa.eu>). Should the buyer exceed the value of the contract by 20% then it is necessary for the contract to be retendered.

The threat to retender a contract likely influences buyers to publish inaccurate data, this is particularly true of framework contracts, that are made available to large numbers of buyers and where it can be very difficult to project the likely use of the framework during its lifetime.

The 2014 contract data is far lower in both volume and value than in other years. This anomaly is because Tenders Electronic Daily, the European Union public procurement journal, was still publishing to an old data standard that could not be effectively parsed to extract contract values and end dates.

Methodologies

Transaction Analysis

The data on suppliers has been analysed in two ways, firstly we've gathered the top 1,000 companies when conducting transaction analysis without contracts, this is partly to make the scale of the data manageable, as there are over 1m unique supplier references in the database. Our second analysis extracts the top 40 suppliers in top 40 categories by value. Again this is to help make the data manageable, and to aggregate the data into efficient groupings. The suppliers are identified as entities external to the public sector with whom expenditure has been recorded. We have manually checked the data to exclude public sector bodies, redactions, and other unnamed or misnamed suppliers (e.g. 'various').

The way these checks and filters have been applied means that there may be some spend missing, e.g. spend with redacted suppliers. We do not look at groupings of companies, so some subsidiary data may be missing.

The data on buyers is monthly for all categories for 374 buyers spread across central government, local government, the NHS, devolved government and public corporations.

This means the top categories for buyers and suppliers differ and totals between buyer and supplier data are not comparable. The data covers the period October 2013 to March 2018.

Using this data, we tracked the volume and value of transactions over time, the largest suppliers, buyers, and categories, and the most popular buyers and suppliers by sector.

Contract Analysis

For individual pieces of analysis on values, dates, buyers, suppliers, supplier types and categories we could only use the information published and excluded all contracts that did not contain the relevant data. The number of contracts analysed for each chart is noted on the relevant slide. This means totals between slides are not comparable.

We have manually checked the contract data to clean records on buyer names and supplier names. We have made improvements to the quality of the data, but some minor inconsistencies remain.

We have also found the proportion of contracts going to SMEs and the top SME buyers and suppliers.

Tender Analysis

This analysis shows the top buyers by volume of contracts. Tender value data is unreliable due to value ranges and missing data and so was not used.

The buyer names have been checked to assess whether or not the buyer is subject to FOI. We then analysed the top buyers by volume of tender and the changes in tender volume over time.

Threshold Analysis

We assessed the impact of including suppliers or contracts over certain thresholds in the FOIA, showing:

- The number of suppliers that would be subject to FOI if thresholds were applied by the value of spend from public sector bodies
- The number and value of contracts subject to FOI if thresholds were based on contract durations or

values.

The three types of threshold we analysed were:

- Suppliers with highest transaction values
- Contracts with longest durations
- Contracts with highest values

Transaction value thresholds

The data covers the top 1,000 suppliers to government by value between October 2013 and March 2018. Based on these 4.5 years of data. The final charts show the percentage of these top suppliers would be covered by FOIA if these different value brackets were adopted.

Contract duration thresholds

We gathered data on 129,706 contract award notices gathered from over 3,000 different publishers, and published in more than 70 different sources, including contracting portals and open data returns published by public bodies.

We created brackets based on contract durations. These charts show the percentage of contracts that would be covered by different duration brackets.

Issues

- Not all contracts have dates – we can only calculate durations for the ones with both start and end dates. At other times, start date and end dates are the same so duration is zero. In both cases, the duration is shown as a null value.
- Not all durations are positive – in eight cases publishers have entered end dates that are before start dates. These files are not included in either chart.

The chart shows the thresholds for the 79,808 contracts with duration values that are not null.

Contract value thresholds

We gathered data on 129,706 contract award notices gathered from over 3,000 different publishers, and published in more than 70 different sources, including contracting portals and open data returns published by public bodies.

We created brackets based on contract values. These charts show the percentage of contracts that would be covered by different duration brackets.

Issues:

- Not all contracts have values – some have values of 0 or no data ('null values')
- There is an incentive for buyers to publish very high values (particularly for frameworks) that do not reflect the reality of the contract to avoid the appearance of overspend
- Framework valuations are at best broad estimates, few are based on real evidence and the obvious desire not to overspend leads to some wild valuations.

Contract Transparency Clauses

The Model Agreements are template contracts created by the Government Legal Service. They include model terms that can be used by public bodies when creating contracts⁴⁸.

We used openly published tender specification and proposed contracts published by government to provide a sample of documents that could be examined. We sorted the documents into six categories:

- Final contracts
- Sample/template contracts

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/731710/Model_Services_Contract_v1.04_E_W__1_.pdf

- Terms and conditions
- Copyright and Intellectual Property documents
- Specifications and requirements
- Procurement process documents (e.g. Invitations to Tender, Pre-Qualification Questions, adverts and award letters)

Each document was searched for evidence of the use of the Model Agreements clause and other references to either transparency or Freedom of Information.

The search terms we used:

- 'Transparency and Freedom of Information' (clause title)
- 'the Transparency Reports;' (sample of clause text)
- Transparency
- Freedom of Information
- Copyright
- Intellectual Property

A positive result from the search was found when, on checking the source document, the complete clause was included. We have also noted when variations on the clause are included in these documents.

While documents that did not include the clause cannot be considered positive results, references to transparency and Freedom of Information in these documents show the degree to which these topics are considered during contracting.

Annex 1 – Data not on Contracts

Finder

Tenders

Tenders on English public procurement portals, listed by whether the tender has been published on Contracts Finder or not:

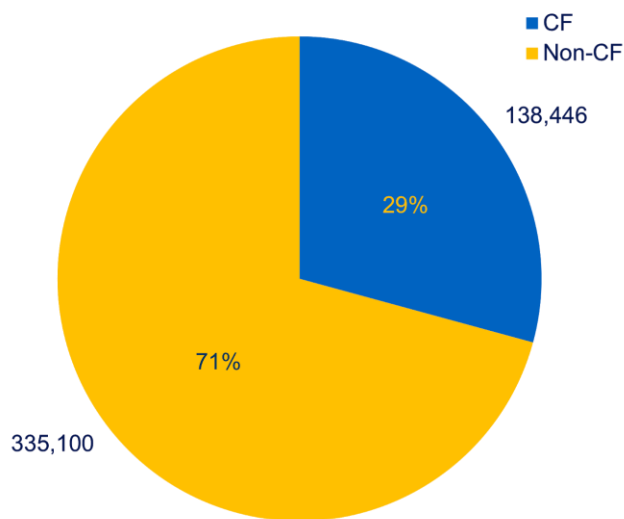


Figure 6.1 - Number and percentage of total tenders published on English public procurement portals that are published in Contracts Finder

Note: per The Public Contracts Regulations 2015, some sectors are not included in the requirement to comply with procurement regulations established within the Statute. These include but are not

limited to: certain tenders for defence and healthcare subject to the threshold established within the Statute. However even sectors that can be excluded can publish their tenders if the publisher deems the tender not to be sensitive, as a search for Ministry of Defence tenders on Contracts Finder would attest.

Contracts

Proportion of tenders of Contracts Finder that do not have an accompanying award notice 1 year or more after initial publication:

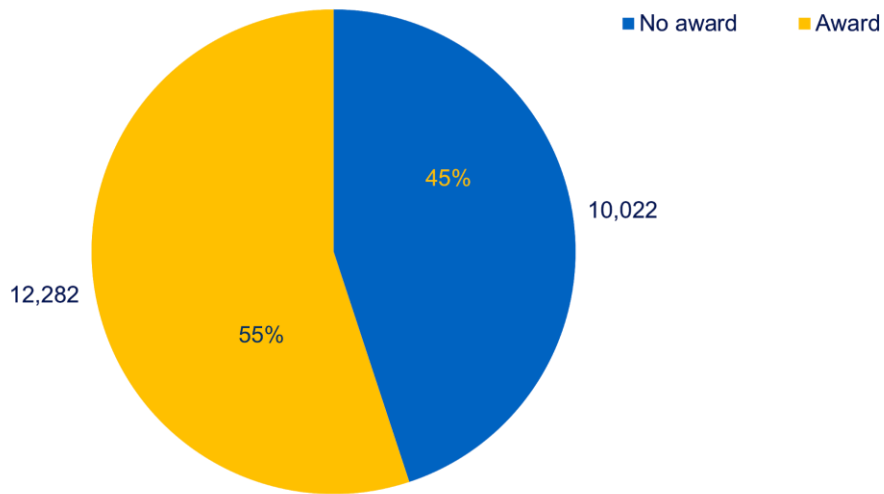


Figure 6.2 - Number and percentage of tenders published to Contracts Finder that do not have a corresponding contract award notice published within 1 year of initial tender publication

Annex

Department for International Development - Contract Reference: PO 8275 – Third Party Money Fund Management Services OJEU publication reference number: 2018/S 068-151197 (01 August 2018)

29.1 The Supplier acknowledges that DFID is subject to the requirements of the FOIA, the Environmental Information Regulations and associated codes of practice and shall assist and cooperate with DFID to enable DFID to comply with its Information disclosure obligations.

29.2 The Supplier shall and shall ensure that its Sub-Contractors shall:

29.2.1 transfer to DFID all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

29.2.2 provide DFID with a copy of all Information in its possession, or power in the form that DFID requires within five (5) Working Days (or such other period as DFID may specify) of DFID's request; and

29.2.3 provide all necessary assistance as reasonably requested by DFID to enable DFID to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

29.3 DFID shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA, the Environmental Information Regulations and associated codes of practice.

29.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by DFID.

29.5 The Supplier acknowledges that DFID may, acting in accordance with any code of practice issued pursuant to Section 45 of FOIA ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services:

29.5.1 in certain circumstances without consulting the Supplier;

29.5.2 following consultation with the Supplier and having taken their views into account;

29.5.3 provided always that where Clause 29.5.1 applies DFID shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

29.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with Clauses 29.7 and 29.8 and shall permit DFID to inspect such records as requested by DFID from time to time.

29.7 The Supplier shall, during this Contract and for a period of at least seven years following the expiry or termination of this Contract, retain and maintain all Information:

29.7.1 in accordance with Good Industry Practice and Law;

29.7.2 in chronological order;

29.7.3 in a form that is capable of audit;

29.7.4 at its own expense.

29.8 Wherever practical, original Information shall be retained and maintained in hard copy form.

**Department for Education - CONTRACT FOR THE EVALUATION OF THE TAILORED
SUPPORT PROGRAMME PROJECT REFERENCE NO: EOR/SBU/2017/092 (16 May 2018)**

12.1. The Contractor acknowledges that the Department is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Department to enable the Department to comply with its information disclosure obligations.

12.2. The Contractor shall and shall procure that its Sub-Contractors shall:

12.2.1. transfer to the Department all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

12.2.2. provide the Department with a copy of all Information in its possession, or power in the form that the Department requires within five Working Days (or such other period as the Department may specify) of the Department's request; and

12.2.3. provide all necessary assistance as reasonably requested by the Department to enable the Department to respond to the Request

for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

12.3. The Department shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether any Information is exempt from disclosure in Contract Ref No: EOR/SBU/2017/092 accordance with the provisions of the FOIA or the Environmental Information Regulations.

12.4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Department.

12.5. The Contractor acknowledges that (notwithstanding the provisions of Clause 13) the Department may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Project:

12.5.1. in certain circumstances without consulting the Contractor; or

12.5.2. following consultation with the Contractor and having taken their views into account;

12.5.3. provided always that where 12.5.1 applies the Department shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

12.6. The Contractor shall ensure that all Information is retained for disclosure and shall permit the Department to inspect such records as requested from time to time.

DEFRA - Award of Contract for the Assessing the Economic Impacts of a Potential Ban on Plastic Cutlery, Plates and Balloon Sticks (30 July 2018)

12.1 The Contractor acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

12.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;

12.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

12.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

12.2 The Contractor acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Contractor or the Services (including commercially sensitive information) without consulting or obtaining consent from the Contractor. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

12.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for determining in its absolute discretion whether any Information relating to the Contractor or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.