



# Anthony Collins

solicitors

A Legal View: The Longer Term Impact on Procurement  
Rules

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# No More Tendering Rules?

- No More Single Market Any More
- Brexit White Paper published 2<sup>nd</sup> February 2017
  - No mention of Procurement
  - International Standards

# International Standards

No more compliance with European standards? –  
Think again

- White paper confirms that the BSI (British Standards Institution) will retain membership of
  - The ISO (International Organization for Standardization)
  - The IEC (International Electrotechnical Commission)

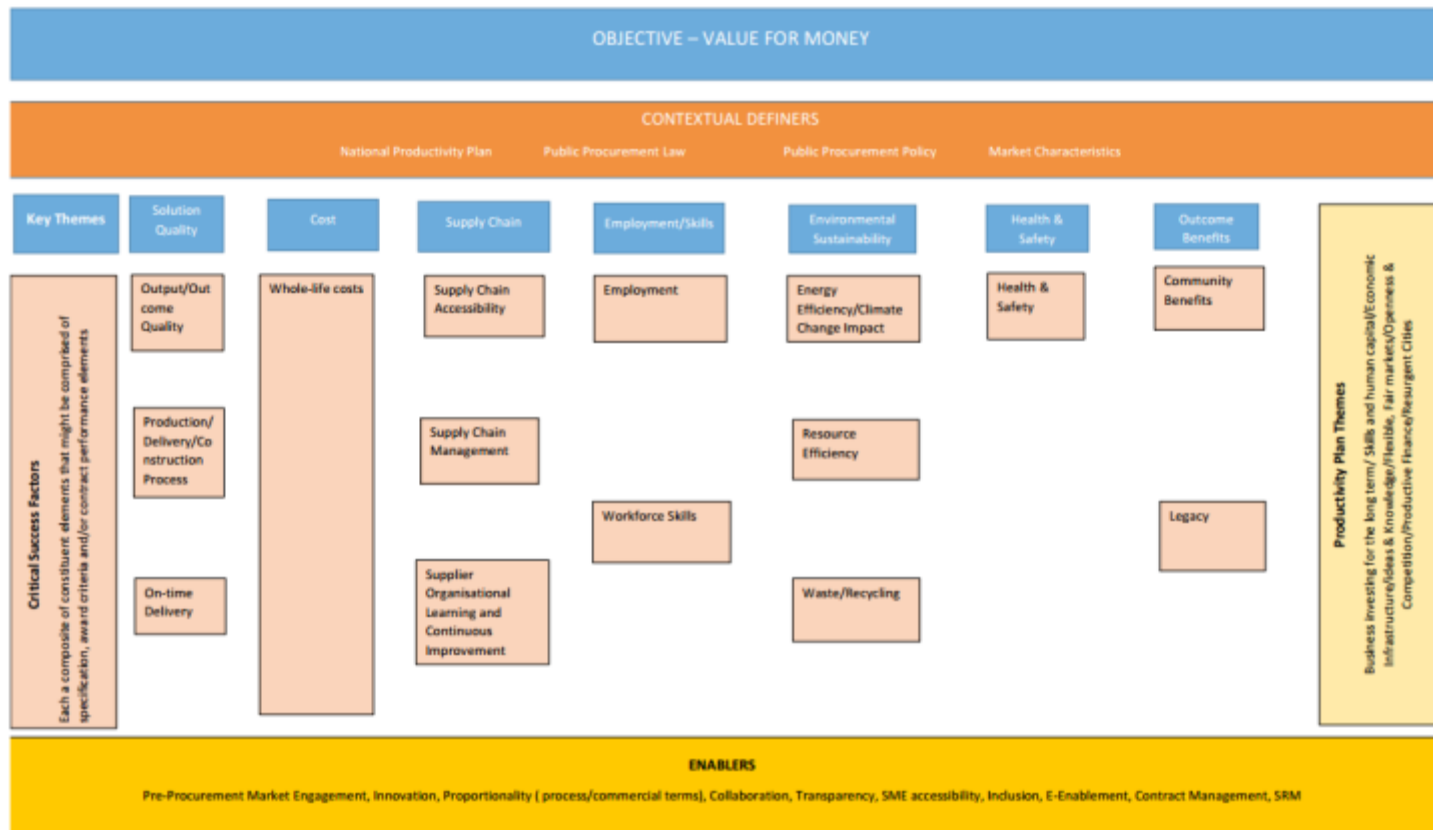
Government expects the UK to continue to play a leading role in developing standards

# The Government's Industrial Strategy – Improving Procurement



# Balanced Scorecard – Embracing Social

Va



Procurement for Growth  
Balanced Scorecard Template

# Balanced Scorecard – Embracing Social Value

- Approach extended – across all major construction, infrastructure and capital investment projects over £10 million
  - Including the National Infrastructure and Construction Pipeline
- Reporting mechanism to be introduced – hold departments to account
- Cut out bureaucracy

# SME supply chains

Raise share of central procurement to one-third by 2020

- Prompt Payment Code
- Assist small businesses by:
  - Banning burdensome PQQs in lower value contracts
  - Ensure public sector contracts advertised on Contracts Finder
  - Payment of undisputed invoices in no more than 30 days
- Trial Supplier and product feedback
- Different procurement thresholds?



# Innovation

More needs to be done

- Small Business Research Initiative (SBRI) reviewed by David Connell in light of the US scheme
- Government to publish new guidance – how to drive innovation

Effective pre-procurement market engagement

Designing procurement to stimulate innovation

Innovation review points

Intellectual Property held by best party

What could the new procurement process look like?



# Reducing Red Tape

- Slicker tendering and awards processes?



# Value for Money v Market Access



# Collaborative Contracting

E.g. Less stringent regulations about companies that can be brought in once a contractor has been selected opens up a variety of possibilities;

- Smaller/different designers can be consulted at the design stage
- Variety of smaller contractors can be brought in to provide better value for money/efficiency at delivery stage
- Free reign for the contract to explore joint ventures

# Longer Framework Agreements?

- Pros

- Long term pricing
  - Contractor stability

- Cons

- Contractors continually changing
  - Not as quick and easy as you may think
  - Often applied badly

# Freedom to Vary?

- PCR 2015 – detailed guidance on variations

Most asked questions – whether or not a contract can be lawfully varied without pre-procuring?

- One option – loosen rules so that contracting authorities can vary where sound commercial reasons can be demonstrated even where this type of variation was not envisaged at the outset (e.g. market prices shifting in an unforeseeable way)



# Remedies and Judicial Interpretation

- Complete overhaul needed?
- Specialised tribunal judges?
- Jurisdiction of the ECJ during transition – Joseph Muscat, prime minister of Malta  
“transitional period where the European court of justice is still in charge of dishing out judgments and points of view.”





# Questions?

- 1) What have you found most frustrating about the EU Procurement Rules? What are you looking forward to no longer having to comply with?
- 2) What is good practice you would like to see in buying works and services that relate to real estate?
- 3) What is the one thing you do not want to see in any new procurement rules?



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