



Response to

GREEN PAPER
on the modernisation of EU public procurement policy
Towards a more efficient European Procurement Market

by

The Social Research Association

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The Social Research Association (SRA)

The SRA was founded in 1978 by social researchers to advance the conduct, development and application of social research. Our main aims are to:

- ⤴ provide a forum for discussion and communication about all types of social research
- ⤴ encourage the development of social research methodology, promote standards of work and develop codes of practice
- ⤴ review and monitor the organisation and funding of social research
- ⤴ promote the development of training and career structures for social researchers
- ⤴ encourage the use of social research for informing, developing and monitoring social policy.

The SRA is a charity (1123940) and limited liability company (6407985), run by and for its members, of which there are currently over 1000 in the UK and Republic of Ireland.

Membership of the SRA is open to anyone interested, or involved, in social research. It is primarily an association of individual members, although we offer the opportunity for research organisations outside the UK and Ireland to affiliate as corporate members

The SRA has a long-standing interest in how research is commissioned, dating back twenty-five years and embodied in a series of useful publications. These publications reflect SRA's perception of the increasingly critical nature of developments in procurement - the adoption of paradigms developed for the purchase of goods and services rather than professional activities, the impact of EU procurement rules, the drive for standardisation and top-down control across

government, the tension between a commitment to open access and level playing fields on the one hand and efficiencies of scale and reduced management costs on the other, now all within the context of the economic downturn, which may very well reduce the quantum of research to be procured.

The SRA considers that a key factor of effective procurement of good quality social research is the existence of a constructive dialogue between the commissioner and the commissioned. This is a theme running through our response. It is also our view that social research needs to be seen as a creative process. Procurement of this intangible product requires the exercise of good judgement on behalf of procurement staff, not the implementation of inflexible rules.

In 2010, the SRA, supported by a grant from the Nuffield Foundation, commissioned a small empirical study about the current ways that social research is commissioned by national statutory bodies in the UK. This study focussed on the ways that procurement procedures, particularly framework agreements, help or constrain the development of constructive relationships between commissioners and suppliers and how they influence (and are believed to influence) the choice of researchers, the research methods used, the productivity of working relationships between commissioners and suppliers, and the quality of the final outputs. The majority of the findings from this study relate to aspects of procurement practice, rather than procurement rules, which are the focus of this consultation. However, one matter emerged that is pertinent to the consultation and is an issue for many SRA members. The EU definition of social research is found to be confusing, falling as it does between service category 10 for 'market research and public opinion polling' and category 8 for 'research and development'. The distinction between the two categories is not clear and many social research studies could be classified as either – but with different consequences for the way it is procured. The inclusion of an 'experimental element' in the definition of R and D is too restrictive. Useful development can often be based on descriptive studies.

The SRA welcomes the opportunity to respond to this consultation. We do have an interest in public sector procurement processes generally and would wish to continue to be involved in discussions and consultations concerning them. However, in this response we have confined our comments to those questions that are particularly pertinent to the commissioning and procurement of social research services.

Our Response to the Questions

Question 1. Do you think that the scope of the Public Procurement Directives should be limited to purchasing activities? Should any such limitation simply codify the criterion of the immediate economic benefit developed by the Court or should it provide additional/alternative conditions and concepts?

The text immediately preceding this question discusses grant agreements that include a legally binding obligation for the beneficiary to provide specific services, distinguishing these from public contracts that require the services that are the subject of the contract to be carried out for the immediate economic benefit of the contracting authority. We are concerned that services that are provided as part of such grant agreements should be those that the supplier would otherwise be unable to provide, to prevent them unfairly competing with economic operators by subsidising their own commercial operations with public money.

Question 2. Do you consider the current structure of the material scope, with its division into works, supplies and services contracts, appropriate? If not, which alternative structure would you propose?

These categories do not seem especially helpful in the context of social research. Although social research falls within the "services contracts" division the category is not specific to the

nature of the supply, which, in our view, all categories should be. In particular, we consider it necessary to distinguish services that have an important element of consultancy, design, creativity or intellectual property from supplies of material products or even services that can be tightly pre-specified and the outputs measured, such as hotel services, transport services or personal care services. The former importantly need the potential for interaction and dialogue between buyer and supplier, and may be harmed by rigidly arms-length purchasing.

Question 6. Would you advocate that the thresholds for the application of the EU Directives should be raised, despite the fact that this would entail at international level the consequences described above?

Yes, certainly for social research. The scope for cross-border supply of social research is usually going to be limited, and the obligation to advertise world-wide is onerous and can be fatally time consuming. However, the cost of bidding for EU-wide contracts is so high that many economic operators would consider doing so only for the larger contracts and so the practical effect on the social research community will be small.

Question 14. Do you think that the current level of detail of the EU public procurement rules is appropriate? If not, are they too detailed or not detailed enough?

The rules often seem over-detailed and over-prescriptive and we have often come across examples where their provisions appear to be not well understood by people buying research. This can lead to inefficiencies in the procurement of social research.

Question 15. Do you think that the procedures as set out in the current Directives allow contracting authorities to obtain the best possible procurement outcomes? If not: How should the procedures be improved in order to alleviate administrative burdens/reduce transaction costs and duration of the procedures, while at the same time guaranteeing that contracting authorities obtain best value for money?

We do not believe that current procedures facilitate the best possible procurement of social research services. On the contrary, current procedures often hinder effective purchasing. It is important to be able to facilitate early stage dialogue, and not be forced into arms-length transactions. And as we explain more fully in response to a later question it is also important to take prior performance and other factors into account, as these are often essential determinants of successful procurement outcomes in a field in which the quality of intellectual input and expertise is central to the performance of the contract. Bidding for contracts is an expensive process and the consequence of too many bidders being asked to submit full tenders is that resources are wasted. This clearly has a cost (individual and collective) for bidders themselves, but also a systemic cost. The supply of high quality research has been outstripped by rising demand, and in this context it seems irresponsible to consume such scarce resources with a large number of bids, almost all of which will by definition be unsuccessful and unproductive. Having large numbers of bids also militates against the kind of valuable and constructive dialogue that we feel needs to be encouraged from early stages.

Question 19. Would you be in favour of allowing more negotiation in public procurement procedures and/or generalizing the use of the negotiated procedure with prior publication?

Yes, definitely. This facilitates the kind of dialogue mentioned above, but it is an approach that buyers often feel too constrained in using, even where the project would benefit greatly from it.

Question 20. In the latter case, do you think that this possibility should be allowed for all types of contracts/all types of contracting authorities, or only under certain conditions?

We see no need for this to apply to all types of contract but it should do so for those types of contract that include an important creative / intellectual / consultancy element (as is the case in much social research).

Question 21. Do you share the view that a generalised use of the negotiated procedure might entail certain risks of abuse/ discrimination? In addition to the safeguards already provided for in the Directives for the negotiated procedure, would additional safeguards for transparency and non-discrimination be necessary in order to compensate for the higher level of discretion? If so, what could such additional safeguards be?

No; it is not inevitable that the negotiated procedure carries a risk of abuse. Purchasers should be able to defend their decisions and actions, which could be challenged in cases where doubt exists. Post-award justification of procurement decisions should therefore be published. However, few social research studies are commissioned through the negotiated procedure, given that it is available only in a very limited number of circumstances, so we have little experience of how it works in practice. There would be many benefits if this procedure could be used more widely.

Question 23. Would you be in favour of a more flexible approach to the organisation and sequence of the examination of selection and award criteria as part of the procurement procedure? If so, do you think that it should be possible to examine the award criteria before the selection criteria?

Yes. Provisions like those described in the preceding text, e.g. 'considerations linked to the tenderer's ability to perform the contract... are not allowed' seem perverse in the context of social research, and diametrically opposed to good purchasing practice. So-called 'fairness' is being given higher priority than good quality and effective purchasing, which is inappropriate and counter-productive. We would stress the importance of buyers being able to make good judgements in relation to creative activities like research, rather than simply applying a set of rules.

Question 24. Do you consider that it could be justified in exceptional cases to allow contracting authorities to take into account criteria pertaining to the tenderer himself in the award phase? If so, in which cases, and which additional safeguards would in your view be needed to guarantee the fairness and objectivity of the award decision in such a system?

Yes, certainly. This should be normal, rather than exceptional, practice in commissioning social research. Relevant experience or 'domain knowledge' is an important criterion for certain types of social research. We consider that the 'risks of discriminatory practice' are exiguous as it must surely be desirable to discriminate between people who are more and less capable of doing the job well. However, there is a danger that over time the diversity of supply may be diminished if the majority of contracts are awarded to a few suppliers. But we feel that this risk is also small given that unsuccessful bidders are likely to respond to their lack of success by developing their expertise and becoming more competitive. They can do this in a variety of ways, including training, recruitment and partnering with other organisations, the last of which helps build capacity and provides opportunities for SMEs to become involved. Suppliers may also respond by reducing prices.

Question 25. Do you think the Directive should explicitly allow previous experience with one or several bidders to be taken into account? If yes, what safeguards would be needed to prevent discriminatory practices?

Yes – for reasons similar to those given in response to question 24. Safeguards such as those mentioned in our response to question 21 could apply.

Question 27. Do you think that the full public procurement regime is appropriate or by contrast unsuitable for the needs of smaller contracting authorities? Please explain your answer.

Question 28. If so, would you be in favour of a simplified procurement regime for relatively small contract awards by local and regional authorities? What should be the characteristics of such a simplified regime in your view?

We think that the full public procurement regime is unsuitable for smaller purchasing organisations. Staff in these organisations often lack the expertise to apply it properly and it is not only onerous, but inhibits really important aspects of good social research purchasing practice – like dialogue with suppliers. However, from the point of view of suppliers the size of the contract is likely to be a more relevant criterion than the size of the purchasing authority, as responding to the full public procurement regime is costly and the cost of bidding cannot be sustained for small contracts. Many commercial operators will have systems for reaching a 'go/ no go' decision about bidding that factors in the cost of bidding, the value of the contract and the expected probability of success.

Question 34. In general, are you in favour of a stronger aggregation of demand/more joint procurement? What are the benefits and/or drawbacks in your view?

In general we are not in favour of a stronger aggregation of demand/ more joint procurement. The risk is that the research specification can be 'dumbed down' to the least complex (and potentially least worthwhile) requirements to suit the needs of just one or a few of the purchasing organisations. Nor is it likely that sufficient account will be taken of local or specific factors that may often be relevant in social research.

Question 36. Do you think that a stronger aggregation of demand/ joint procurement might involve certain risks in terms of restricting competition and hampering access to public contracts by SMEs? If so, how could possible risks be mitigated?

Yes; smaller organisations may lack the capacity to bid for larger contracts. Risks could be mitigated through the use of appropriate framework agreements that enable SMEs to bid in partnership with other organisations.

Question 37. Do you think that joint public procurement would suit some specific product areas more than others? If yes, please specify some of these areas and the reasons.

We think this is appropriate only in commodity markets, where differentiation in terms of quality is small.

Question 41. Do you think that EU rules on changes in the context of the contract execution would have an added value? If so, what would be the added value of EU-level rules? In particular, should the EU rules make provision for the explicit obligation or right of contracting authorities to change the supplier/ terminate the contract in certain circumstances? If so, in which circumstances? Should the EU also lay down specific procedures on how the new supplier must/ may be chosen?

and

Question 44. Do you think that contracting authorities should have more possibilities to exert influence on subcontracting by the successful tenderer? If yes, which instruments would you propose?

Some subcontracting is part of normal business arrangements (e.g. printing) and should always be disregarded. In cases where something that is of the essence of the contract is to be subcontracted then, where possible, the subcontractor should be evaluated as part of the contract award. A change of subcontractor should not necessarily trigger a new contract procedure but if the capability of the subcontractor was a material factor in determining the contract award then any change must be acceptable to and approved by the contracting authority, otherwise the contract should be re-tendered.

In some cases sub-contracting can enhance the quality of the work by bringing in specialist resources. Buyers of course have a wholly proper interest in making sure that sub-contracting does not dilute or damage the quality of the work, and that it does not simply become a device for substituting cheaper labour. They should be able to satisfy themselves both that it is reasonable and appropriate to subcontract work, and that the proposed sub-contractors will be able to do what is needed.

However there should not be a general presumption against sub-contracting, which would (among other things) be disadvantageous to SMEs and specialist suppliers, and might starve some projects of specialist resources. Often in social research it is only operational or logistical aspects of the work that are subcontracted (for instance an organisation with specialist knowledge of a subject area may sub-contract fieldwork or data processing) and provided the prime contractor takes full contractual responsibility for the work of their subcontractor, this should be disregarded.

Question 42. Do you agree that the EU public procurement Directives should require Member States to provide in their national law for a right to cancel contracts that have been awarded in breach of public procurement law?

Only for flagrant, material and damaging breaches, not technicalities.

Question 46. Do you think that the EU public procurement rules and policy are already sufficiently SME-friendly? Or, alternatively, do you think that certain rules of the Directive should be reviewed or additional measures be introduced to foster SME participation in public procurement? Please explain your choice.

No. They need to be more SME-friendly. Proper supply chain management in framework agreements is one way in which SME participation in public procurement can be fostered. The lead contractor in the supply chain must ensure that all opportunities are made known to all supply chain members and must operate fair and transparent policies and procedures for allocating work to members of the supply chain.

Question 48. Do you think that the rules relating to the choice of the bidder entail disproportionate administrative burdens for SMEs? If so, how could these rules be alleviated without jeopardizing guarantees for transparency, non-discrimination and high-quality implementation of contracts?

In some ways. Responding to PQQs is not necessarily burdensome as long as there is some standardisation in the questions. If that is so then it is quick and easy to respond. However, minor variations in the requirements or wording have to be identified and necessitate a re-writing of standard response material. [This is also relevant in the context of *Question 56 "Do*

you think the mutual recognition of certificates needs to be improved? Would you be in favour of creating a Europe-wide pre-qualification system?" to which our answer is yes.]

However, it is not only administrative burdens that deter SME participation. The arms-length, non-interactive box-ticking emphasis tends to favour large organisations – not necessarily because they are more competent, but because their competences are more easily demonstrated in that kind of competition, or because they are more practised in responding in that way. Also track record is a vital way for SMEs to show that they can carry out contracts successfully, but (regrettably) this seems currently inadmissible.

Question 52. What are the advantages and disadvantages of an option for Member States to allow or to require their contracting authorities to oblige the successful tenderer to subcontract a certain share of the main contract to third parties?

We do not think that this is a good idea. Perhaps a better approach would be for buyers to promote scope for building consortia to enable small organisations to participate in contracts that might be too large for individual SMEs.

Question 55. In this context, do you think more specific instruments or initiatives are needed to encourage the participation of bidders from other Member States? If so, please describe them.

No, certainly not in social research. It will add extra work for little or no likely benefit. Much social research is so specific to a particular culture and/or language that it is not easy to work across national boundaries. However, there are important exceptions to this – comparative studies, for example.

Question 57. How would you propose to tackle the issue of language barriers? Do you take the view that contracting authorities should be obliged to draw up tender specifications for high-value contracts in a second language or to accept tenders in foreign languages?

No, language barriers would be an automatic disqualification in social research. This suggestion adds more bureaucracy for limited benefit. Would purchasers then have to accept bids in other languages? The cost and time of translation are relevant factors.

Question 58. What instruments could public procurement rules put in place to prevent the development of dominant suppliers? How could contracting authorities be better protected against the power of dominant suppliers?

This is not generally a problem for social research, which is characterised by many small suppliers often working in niche markets. Even large organisations conducting similar research (eg market or opinion research) will tend to have small to medium social research divisions.

Question 63. Do you share the view that the possibility of defining technical specifications in terms of performance or functional requirements might enable contracting authorities to achieve their policy needs better than defining them in terms of strict detailed technical requirements? If so, would you advocate making performance or functional requirements mandatory under certain conditions?

If this means being able to specify what the purchasing organisation wants to achieve rather than precisely how that is to be achieved then we support it, as it represents good practice in our view. But it should be an approved option, not mandatory.

Question 65. Do you think that some of the procedures provided under the current Directives (such as the competitive dialogue, design contests) are particularly suitable for taking into account environmental, social, accessibility and innovation policies?

We approve of competitive dialogue although, as with the negotiated procedure, its restriction to large and complex procurements precludes its use for most social research. Dialogue with research suppliers should be normal, not exceptional, irrespective of whether it brings other benefits such as those listed here. We feel these approaches should be used more than they are at present in social research buying.

Question 69. What would you suggest as useful examples of technical competence or other selection criteria aimed at fostering the achievement of objectives such as protection of environment, promotion of social inclusion, improving accessibility for disabled people and enhancing innovation?

Demonstrated corporate policies in these areas.

Question 70. The criterion of the most economically advantageous tender seems to be best suited for pursuing other policy objectives. Do you think that, in order to take best account of such policy objectives, it would be useful to change the existing rules (for certain types of contracts/ some specific sectors/ in certain circumstances):

70.1.1. to eliminate the criterion of the lowest price only;

70.1.2. to limit the use of the price criterion or the weight which contracting authorities can give to the price;

70.1.3. to introduce a third possibility of award criteria in addition to the lowest price and the economically most advantageous offer? If so, which alternative criterion would you propose that would make it possible to both pursue other policy objectives more effectively and guarantee a level playing field and fair competition between European undertakings?

A 'lowest price' criterion would rarely if ever be justified in procurement of social research. The key criteria should always be quality and value for money, never price in isolation. Value for money, not price, should be the criterion. But this is generally true, not just for achieving other policy goals. Limiting the use of the price criterion or the weight attached similarly sounds a good idea on general grounds.

Question 71. Do you think that in any event the score attributed to environmental, social or innovative criteria, for example, should be limited to a set maximum, so that the criterion does not become more important than the performance or cost criteria?

The criterion should not outweigh performance but could outweigh the cost.

Question 72. Do you think that the possibility of including environmental or social criteria in the award phase is understood and used? Should it in your view be better spelt out in the Directive?

It should be better spelt out to encourage its use, as well as to avoid confusion.

Question 74. Contract performance clauses are the most appropriate stage of the procedure at which to include social considerations relating to the employment and labour conditions of the workers involved in the execution of the contract. Do you agree? If not, please suggest what might be the best alternative solution.

This would be acceptable if the contract performance clauses were communicated to all possible suppliers at the earliest possible stage; otherwise they should be part of the selection criteria.

Question 75. What kind of contract performance clauses would be particularly appropriate in your view in terms of taking social, environmental and energy efficiency considerations into account?

These already exist in most of the contracts awarded by government Departments in the UK – for instance the requirement to use recycled paper for reports.

Question 76. Should certain general contract performance clauses, in particular those relating to employment and labour conditions of the workers involved in the execution of the contract, be already specified at EU level?

This is a complex area. We are in favour of good employment practices but are unsure that these contracts are the place to exercise them. There already exist legal requirements (see our answer to Question 79) that are adequate in our view. Our concern is to avoid the proliferation of additional requirements that are extrinsic to the essence of the contract. To have to address these in every bid for social research could result in a reduction in focus on the (often really difficult) substantive problem under study; and in concomitant increases in cost

Question 79. Some stakeholders suggest softening or even dropping the condition that requirements imposed by the contracting authority must be linked to the subject matter of the contract (this could make it possible to require, for instance, that tenderers have a gender-equal employment policy in place or employ a certain quota of specific categories of people, such as jobseekers, persons with disabilities, etc.). Do you agree with this suggestion? In your view, what could be the advantages or disadvantages of loosening or dropping the link with the subject matter?

The advantage of such conditions (apart from the general public good inherent in fair employment practices) is that good suppliers are not undercut on price by bad employers who exploit their workers. However we are very much opposed to the use of quotas as an attempt to ensure good employment practices. In our view fair employment practices are not about quotas - you can fill quotas and still be a bad employer. The essential thing, we believe, is to ensure that no job applicant or employee receives less favourable treatment on the grounds of gender, race, disability, colour, nationality, ethnic or national origin, marital status, sexual orientation, responsibility for dependents, religion, religious belief or philosophical belief, trade union activity, political beliefs or age.

There are, of course legal obligations - in the UK these are the Race Relations Act 1976, the Sex Discrimination Act 1975, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, and The Employment Equality (Age) Regulations 2006. We are unaware of the legal frameworks in other EU countries but assume that they are similar to these in essence but different in detail, so we suspect that this could not become a European standard quickly or easily. There are some sub-national requirements as well – for instance anyone

bidding for work for certain public sector organisations in London must agree to pay at least the "London living wage", which is higher than the UK's minimum wage.

Question 80. If the link with the subject matter is to be loosened, which corrective mechanisms, if any, should be put in place in order to mitigate the risks of creating discrimination and of considerably restricting competition?

Standard rules of good employment practice should apply, but the way in which these are judged should not create administrative burdens that discriminate between organisations of different sizes. As little social research is commissioned across national boundaries we feel that the employment legislation in each country provides a sufficient framework for ensuring good employment practice. We oppose the introduction of additional regulations unless it can be demonstrated that the benefits of them outweigh the additional costs and administrative burdens that they impose.

Question 81. Do you believe that SMEs might have problems complying with the various requirements? If so, how should this issue be dealt with in your view?

All suppliers of whatever size should follow non-discriminatory employment practices. Yet an organisation can have up to 250 employees and still be classed as an SME; an organisation of this size would find it easier to comply than would a smaller organisation. Very small organisations could not meet quotas (which we are opposed to anyway) and would need to be exempt from such provisions, if such were to be introduced.

Question 82.2. Do you think that EU public procurement legislation should allow contracting authorities to apply selection criteria based on characteristics of undertakings that are not linked to the subject of the contract (e.g. requiring tenderers to have a gender-equal employment policy in place, or a general policy of employing certain quotas of specific categories of people, such as jobseekers, persons with disabilities, etc.)?

Yes, it should be allowed but not mandatory. Good employment practice should be encouraged but quotas are not the way to do it, for the reasons given above. Any requirement should be such that it did not impact unequally on either large or small organisations.

Question 82.3. Do you consider that the link with the subject matter of the contract should be loosened or eliminated at the award stage in order to take other policy considerations into account (e.g. extra points for tenderers who employ jobseekers or persons with disabilities)?

No, this is appropriate only at the selection stage, not the award stage.

Question 82.4. Do you think that the EU public procurement legislation should allow contracting authorities to impose contract execution clauses that are not strictly linked to the provision of the goods and services in question (e.g. requiring the contractor to put in place child care services for the his employees or requiring them to allocate a certain amount of the remuneration to social projects)?

No, this is a step too far at the present time.

Question 91. Do you think there is a need for further promote and stimulate innovation through public procurement? Which incentives/measures would support and speed up the take-up of innovation by public sector bodies?

Innovation is an important issue in social research. Almost every research project requires innovative thinking – not usually in developing new techniques, but in finding the most relevant ways of applying techniques to the problems in hand. Problem analysis, questionnaire design, sample design, analysis design, qualitative interviewing, stimulus material design and interpretation of findings all have important creative components. Creativity (allied of course to sound technique) is often what makes the difference between a really penetrative and valuable project and one that goes through the motions without coming up with anything really useful. So this is a crucial dimension. The use of arms-length commissioning procedures with little scope for dialogue tends to suppress innovation, and reduces the buyer's ability to take account of it in decision-making. What also militates against it is the perception that all discourse between buyer and supplier has to be shared with other bidders, which encourages suppliers to avoid discussing important issues for fear that this will pass on potentially valuable insights to their competitors. Buyers seem to be uncertain about their obligations to pass on information, and often tend to play it safe by reporting everything, which certainly stifles both dialogue and innovation. Our view is that all discussion between a buyer and any individual bidder should be privileged unless it leads to the tendering goalposts being moved, in which cases all parties clearly need to know. At present bidders tend to assume that anything they say will be passed on – so they don't say it.

Question 92. Do you think that the competitive dialogue allows sufficient protection of intellectual property rights and innovative solutions, such as to ensure that the tenderers are not deprived of the benefits from their innovative ideas?

We regard protection of intellectual property rights as very important. Our position is that suppliers should benefit from any useful innovations they come up with. Ideas proposed by unsuccessful bidders should not then be passed on for use by the successful bidder. If a situation arises where this is necessary for some exceptional reason then rights to the ideas should be bought from their author at a negotiated rate. Other things being equal, relevant and attractive innovation should weigh in favour of the innovator in decisions about contract awards. But a situation may arise where one bidder has good ideas but impaired ability to carry them out.

Question 93. Do you think that other procedures would better meet the requirement of strengthening innovation by protecting original solutions? If so, which kind of procedures would be the most appropriate?

There should be more scope for genuinely confidential dialogue with individual bidders (which should be standard, not exceptional). This requires a serious change in the perceived (and actual) procurement culture. There should also be more recognition of the need to compensate bidders whose ideas are used even though they did not win the contract.

Question 94. In your view, is the approach of pre-commercial procurement, which involves contracting authorities procuring R&D services for the development of products that are not yet available on the market, suited to stimulating innovation? Is there a need for further best practice sharing and/or benchmarking of R&D procurement practices used across Member States to facilitate the wider usage of pre-commercial procurement? Might there be any other ways not covered explicitly in the current legal framework in which contracting authorities could request the development of products or services not yet available on the market? Do you see any specific ways that contracting authorities could encourage SMEs and start-ups to participate to pre-commercial procurement?

This is potentially attractive, but innovation in research is not always (or typically) a matter of developing specific products or services which then have wide market application. It tends to

be more project-specific.

Question 95. Are other measures needed to foster the innovation capacity of SMEs? If so, what kind of specific measures would you suggest?

See the responses to the previous four questions. We are not convinced that these issues are specific to SMEs.

Question 96. What kind of performance measures would you suggest to monitor progress and impact of innovative public procurement? What data would be required for this performance measures and how it can be collected without creating an additional burden on contracting authorities and /or economic operators?

Research into the level of innovation and the factors that affect this could be useful.

Question 100. Do you share the view that procurement markets are exposed to a risk of corruption and favouritism? Do you think EU action in this field is needed or should this be left to Member States alone?

There must always be some risk of corruption or favouritism in any buying and selling transactions. Where it exists it is deplorable, and should be detected and punished. However we do not judge it to be a high risk in the social research field, and it would be counter-productive to burden routine procurement with excessive protection against it. Indeed this already seems to be the case, and more would be very unwelcome. Favouritism is wrong if it means that a disproportionate amount of work is given to a particular supplier for reasons that are unrelated to their capacity and suitability for a particular project. However some suppliers will get more work because they are just better at their job than others. That is not favouritism but good buying practice – although it can look like favouritism to unsuccessful parties.

Question 102. Which of the identified risks should, in your opinion, be addressed by introducing more specific/additional rules in the EU public procurement Directives, and how (which rules/safeguards)?

We are not convinced that we should be looking for more risks and controls, but ways of freeing up the process to enable better quality buying.

Question 109. Should there be specific rules at EU level to address the issue of advantages of certain tenderers because of their prior association with the design of the project subject of the call for tenders? Which safeguards would you propose?

This is an important issue, and the preamble doesn't make a distinction between real world advantages (e.g. someone might be better able to do the work because of prior involvement, in which case that is a real factor, not something to be discounted), and competitive advantages, in which being on an inside track would help their chances even if they were not better-placed in reality to do the work. The latter needs to be compensated for, the former does not. Excluding bidders who participated in the preparation seems both unjust and counter-productive. We don't think that accepting that people have done good and relevant work in the past is discriminatory. Recognising and encouraging good quality work should be a component in the judgement made. However the situation needs to be made clear to all bidders so they can assess their chances of success and decide whether to bid. It's also not just a question of privileged information (which might be shared subject to intellectual

property considerations) but enhanced skill-sets or know-how, which neither can nor should be shared in this way. However, if the original contract was to develop a methodology then it is fair to put that methodology to other bidders to tender for. In such cases it is essential that commercially sensitive information such as what resources were required to do a task is not divulged to other bidders – just the methodology so that they may determine what level of resourcing they offer in a competitive situation.

Question 110. Do you think that the problem of possible advantages of incumbent bidders needs to be addressed at EU level and, if so, how?

No, although the situation should be made clear to all bidders. Suppliers should not be awarded projects simply because they are incumbents, but where their incumbency makes them better equipped to do the work, that is a real and relevant fact which has to be weighed in award decisions. Also in social research there are sometime situations (as in continuous research designed to assess changes over time) where there may be positive advantages in continuity. In such situations bidders should be invited to suggest how they would maintain such continuity if they were awarded the contract rather than the incumbent, and their responses should be taken into account in the award procedure. There are also circumstances in which incumbency can be a competitive disadvantage - ie the incumbent 'knows too much', is resistant to desirable innovation, or trades on their incumbency and may be too expensive in consequence.

Question 113. Are there any other issues which you think should be addressed in a future reform of the EU public procurement Directives? Which issues are these, what are - in your view - the problems to be addressed and what could possible solutions to these problems look like?

In the context of social research the Directives over-weight considerations of competition and level playing fields at the expense of quality and value of supply. In a field like social research they often tend to lead to apparently fairer but less effective buying by discouraging early-stage dialogue, which is often vital to mutual understanding. They also effectively lock researchers out of project design by encouraging buyers to issue tightly-specified research briefs. Fairness is also not necessarily achieved by having stringent procedures – partly because there would always be scope for buyers to subvert the process however many people they were obliged to allow to bid, and partly because a completely level playing field does not exist outside the realms of theory. The system needs to be rebalanced. At present in the UK social research field it tends to encourage a disengaged box-ticking approach which does not provide a good basis for a proper assessment of the true capabilities of the various bidders.

Question 114. Please indicate a ranking of the importance of the various issues raised in this Green Paper and other issues that you consider important. If you had to choose three priority issues to be tackled first, which would you choose? Please explain your choice.

Our three priorities are:

1. A recognition that procurement of intangibles, like social research, requires different approaches than the procurement of tangible products and services. Judgement needs to be exercised rather than simply applying rigid rules. More flexibility is needed, and fewer mandatory requirements.
2. Previous experience and performance needs to be able to be taken into account when choosing the supplier. It should be recognised that some suppliers do a better job than others and should be rewarded for this.
3. The EU definition of social research should be re-examined and changed to avoid the current confusion.