



Construction Law | Dispute Resolution | Procurement | Training

## Agile Contracts:

How do you leverage the available flexibilities in the new regs and so put in place the maximum lawful contract agility?

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# About Me



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# Why Change?

# Green Paper - Dec 2020

## 'Transforming Public Procurement'



- *create a simpler and more flexible, commercial system that better meets our country's needs while remaining compliant with our international obligations*
- *open up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts*
- *embed transparency throughout the commercial lifecycle so that the spending of taxpayers' money can be properly scrutinised.*

# Key Elements of the Bill

# General



- Reduction in volume
  - No separate Defence, Concession, Utility and Public Contract Rules
  - All in one
  - Relies on Secondary legislation, so will grow in volume significantly
- Language and style is not always easy to understand
  - Could lead to different interpretations
  - Which leads to differences
  - Which leads to disputes
- It is going to take effort

# New Procedure

## Old (only first two as of right)

- Open
- Restricted
- Competitive Procedure with Negotiation
- Competitive Dialogue
- Innovation Partnership
- Negotiated without notice

## New (only first two as of right)

- Open Procedure
- Competitive Flexible Procedure
- Direct Award

# Open Procedure



*“a single-stage tendering procedure without a restriction on who can submit tenders”*

- Nothing new here.

# Competitive Flexible Procedure



*“Such other competitive tendering procedure as the contracting authority considers appropriate for the purpose of awarding the public contract.”*

- Very broad.

# The Limits



- Procedure is a proportionate ... having regard to the nature, complexity and cost of the contract.
- Not permit the participation of suppliers that did not submit a tender in the first round of tendering or that were excluded following an earlier round.

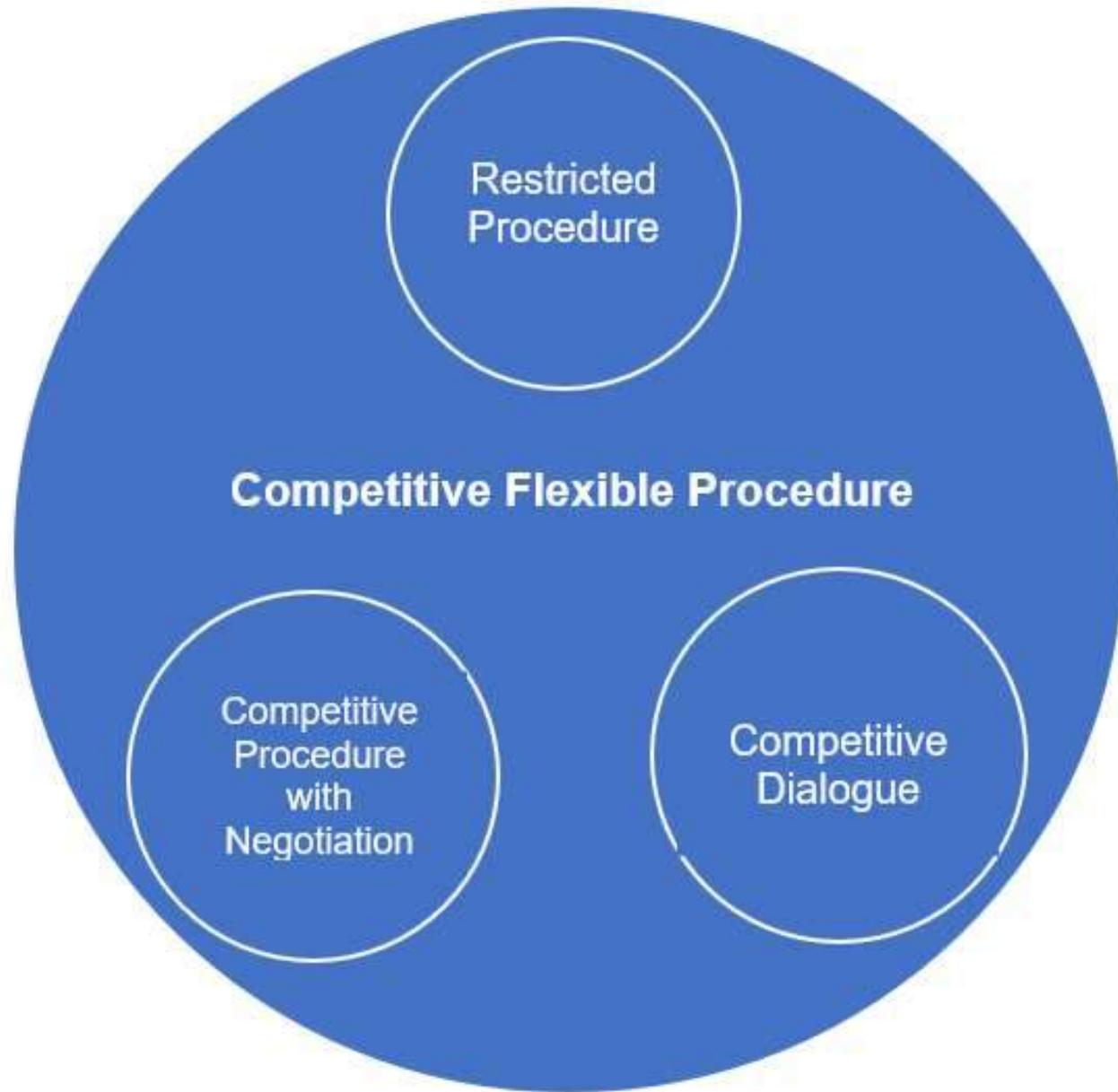
## CFP may:

- Limit the number of participating suppliers, generally or in respect of particular tendering rounds or other selection processes.
- Provide for the refinement of award criteria.
- Provide for the exclusion of suppliers:-
  - by reference to conditions of participation;
  - by reference to an intermediate assessment of tenders;
  - that are not United Kingdom suppliers or treaty state suppliers, including intended sub-contractors;
  - are excluded or excludable suppliers.
- Limit the number of lots in respect of which any one supplier can submit a tender or win.

# A Broad Church

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- What you do now will probably fit under the CFP umbrella
- No need to rush to do differently



But... could this flexibility lead to

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# What Else is Needed?

- Secondary Legislation, including consultation stage
- Guidelines
- Training & Development
  - Knowledge Drops (Videos)
  - E-Learning (10 hours)
  - Instructor-led Deep Dive (3 days)

# Other Points



- You can restrict competition to members of a Dynamic Market
- Open Frameworks – a series of frameworks successively awarded

# Conclusion



# Conclusion



- There is a lot of work still to be done
- The new rules will allow flexibility which:
  - Might be good
  - Might allow too much scope for rogue actors
  - Might put the market off competing
- For now, keep informed and plan for change





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## Thank you

*Any Questions ?  
Please keep in touch*

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