

Stève Hervouet
Chief Strategy and Regulatory Officer
Smart DCC Ltd
65 Gresham Street
London
England
SW1P 1QT

By email only

Date: 10 January 2025

Dear Stève,

Direction to revise DCC Procurement Strategy under Licence Condition 16 Part E 16.25

This letter sets out Ofgem's¹ decision to issue a direction pursuant to paragraph 16.25 of licence condition ("LC") 16 of the Smart Meter Communication Licences (the "Licence") to revise the Procurement Strategy for Relevant Service Capability² (the "Procurement Strategy") of Smart DCC Ltd ("DCC").

Background

LC 16.24 of the Smart Meter Communication Licence (the "Licence") requires DCC to review its Procurement Strategy to ensure it continues to accurately reflect the requirements of LC 16 and propose to the Authority any revisions that DCC deems appropriate or necessary for better complying with those requirements.

Pursuant to LC 16.25, after consulting with DCC and other appropriate persons, the Authority may direct DCC to revise its Procurement Strategy with effect from a time and to an extent as outlined in the direction.

On 4th June 2024, DCC shared an updated Procurement Strategy (the "Revised Strategy") with Ofgem.

¹ The terms "We", "Ofgem" and "the Authority" are used interchangeably.

² Terms used in this letter have the meaning given to them under the Licence.

Having considered the Revised Strategy, on 26th July 2024, Ofgem shared a consultation with DCC on a proposal to direct that revisions be made to the Procurement Strategy. We refer to that consultation for the reasons for each proposal. DCC provided its response on 16th August 2024.

Having carefully considered DCC's response, and pursuant to LC 16.25, Ofgem now directs DCC to make revisions to the Procurement Strategy (v.8.0). The direction is attached to this letter.

Response to the consultation

We deal in turn with each of the proposals below, which should be read together with Ofgem's consultation of 26th July 2024.

1) Latest procurement strategy

We consulted on the basis that the latest Procurement Strategy is the version from 2018 (v.8.0). DCC accepts that this version should form the baseline for any changes.

2) Restrictions on type of service providers, technologies, and/or technical standards

We proposed that the inclusion of principles relating to the selection of a particular type of service providers, technologies, and/or technical standards for procuring Relevant Service Capability should not be included in the Procurement Strategy. DCC has said that these principles are intended to ensure there are no technical issues with the services that have not been tested at the required scale and to avoid the situation where proprietary technology makes it difficult to use another provider. DCC has proposed generic wording to be used. We remain concerned that the inclusion of such principles inappropriately restricts the selection of a particular type of service providers, technologies and/or technical standards. We therefore conclude that the relevant wording must not be incorporated into the Procurement Strategy.

3) Alignment to Telecoms

We proposed that the text regarding telecoms in the Revised Strategy is not needed. DCC accepts this position.

4) Operational risk / commercial complexity framework and procurement routes

We proposed that DCC's methodology to pre-determine the procurement route should not be included in the Procurement Strategy because it could amount to a pre-determination of the procurement route contrary to the requirements of Licence Condition 16, which requires Relevant Service Capacity to be procured competitively by default. DCC has said that the

framework is intended to be used to determine the best procurement route using a range of factors but still codifies competitive procurement as the default approach.

We remain concerned that the inclusion of this framework in the Procurement Strategy risks DCC pre-empting the appropriate procurement route for services prior to all of the circumstances being known. Instead, DCC must consider each contract or service on a case-by-case basis, and at the time of the procurement, with regard to the principles that are applicable to procurement activities under Licence Condition 16. We therefore conclude that the relevant methodology must not be incorporated into the Procurement Strategy, including as a tool to guide discussions on procurement approaches.

5) Licence conditions 16.6A to 16.6C

We proposed that the reference to the process in paragraphs 16.6A to 16.6C of LC 16 ought not to be included in the Procurement Strategy. DCC accepts this position.

6) Framework and call-off contracts

Whilst we are not opposed to the use of a framework agreement and call-off contracts, we proposed that the Procurement Strategy ought to be clear that these agreements and contracts are limited to the procurement of frequently purchased and predefined goods and services. DCC agreed with this position.

7) Criteria for direct award

We proposed that the criteria for direct award ought to be treated as guidance only. DCC agreed with this position.

Direction

Our Direction is contained in Annex 1 to this letter. The Direction does not include immaterial changes to the Procurement Strategy such as outdated references relating to EU procurement legislation and the forward plan for the procurement of Relevant Service Capability. Pursuant to our letter of 7 July 2017, we invite DCC to propose these immaterial changes to Ofgem voluntarily. At which point, we will write to confirm our position so that DCC may proceed to comply with its obligations in Part of LC 16.

I am copying this letter to Karin Meurk-Harvey (Chief Commercial Officer, DCC).

Yours sincerely,

Ayena Gupta

Head of DCC Oversight and Regulatory Review

The Office of Gas and Electricity Markets

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Annex 1 - Direction to revise the Licensee's Procurement Strategy For and on behalf of the Gas and Electricity Markets Authority

DIRECTION PURSUANT TO LICENCE CONDITION 16.25 OF THE SMART METER COMMUNICATION LICENCE³

To: Smart DCC Ltd (Company Number 08641679)

Whereas:

1. Smart DCC Ltd (the "Licensee") is the holder of the Smart Meter Communication Licence (the "Licence") granted pursuant to sections 7AB(2) and (4) of the Gas Act 1986 and 6(1A) and (1C) of the Electricity Act 1989.
2. Paragraph 16.25 of the Licence allows the Authority⁴ to direct the Licensee to revise its Procurement Strategy for Relevant Service Capability.
3. The Authority has consulted the Licensee on its proposed revisions and it does not consider any other persons needs to be consulted.
4. The reason for this Direction is to ensure that the Procurement Strategy accurately reflects the requirements of Licence Condition 16, as explained further in the main body of the letter.

Therefore:

The Authority hereby directs, pursuant to Licence Condition 16.25, the Licensee to revise its Procurement Strategy for Relevant Service capability to reflect the amendments outlined in the copy of the tracked changes in red on the Procurement Strategy contained in Annex 2 to this letter with effect from **24 January 2025**.

This Direction and the letter to which it is attached constitutes notice of the reasons for the decision pursuant to section 49A of the Electricity Act 1989 and section 38A of the Gas Act 1986

Ayena Gupta

Head of DCC Oversight and Regulatory Review

For and on behalf of the Gas and Electricity Markets Authority

10 January 2025

³ All terms used in this Direction shall have the meaning given to them under the Licence, unless expressly stated otherwise.

⁴ The Office of the Gas and Electricity Markets (Ofgem) supports the Authority in its day to day work. In this document 'we', 'us', 'Ofgem' and 'Authority' are used interchangeably.