

Green Paper: Transforming public procurement

Sustain response to public consultation

10 March 2021

Summary of response

National and local government in the UK spends around £2bn of taxpayer funds on the procurement of food each year and 25% UK citizens eat a public sector meal each day. We agree with the government's 2019 manifesto assertion that British farmers and fishermen should be able to profit by producing food and fish that are the envy of the world, and that the public sector should 'Buy British to support our farmers and reduce environmental costs'.

Unfortunately, at the moment, the UK's procurement laws and procedures are not delivering on these aims. The proposals in the *Green Paper: Transforming Public Procurement* could help address this, especially through better enforcement of public sector procurement standards, better transparency, and a shifting of the emphasis in awarding contracts towards public goods.

In the main, Sustain supports the ambitions of the Green Paper, but they must come with better definition and clarity. If the intention is to 'speed up and simplify' public procurement, this must come with clear standards for delivery, to ensure the highest standards and create a level playing field for service providers. Public procurement has the potential to create thousands of jobs for UK farmers and food producers and help deliver the government's climate and nature emergency commitments.

About Sustain

[Sustain is the UK alliance for better food and farming.](#) We represent over 100 not-for-profit national organisations and thousands more groups and enterprises at a local level. Sustain has been working on public sector procurement for nearly 20 years, including delivering support and training to public sector bodies, championing good practice through [award schemes](#), [gathering information and reporting good practice](#), and [tracking progress on compliance](#). We have also [worked to get good food standards adopted more widely across the food industry](#).

We welcome the opportunity to present this evidence, and would be happy to talk to the team to answer any further questions.

Consultation questions

Q1. Do you agree with the proposed legal principles of public procurement?

- We were heartened to see climate change mentioned in the introduction to the Green Paper as an aim, but disappointed to find there were no specific proposals to see that aim through. The government has set in law that the UK will achieve net zero emissions by 2050 and public sector procurement could play a demonstrable role in meeting that target, or indeed

contribute to missing it. We recommend that all tenders must show how they contribute to delivering net zero emissions with specific guidance for tenders in each sector. Tackling the climate and nature emergency should be included as a specific legal principle.

- Value - We would recommend that the government rewords its definition of contracts needing to provide 'value for money' in the proposed legal principles. If it doesn't, it might actually incentivise a distorting race to the bottom, whereby the cheapest contract which is potentially damaging wins out. We would argue that there is clear value in channelling available funds to local communities and provide further information on the benefit of this below.
- Transparency – the Green Paper says transparency will *remain* a fundamental tenet of public procurement to ensure proper scrutiny of contract awards and minimise the risk of corruption, but actually it is missing at the moment and needs to be improved (see below). The current procurement regulations allow contracting authorities to take into account the past performance of a supplier on only very limited grounds and commercial teams often have to rely on bidders' self-declarations rather than objective, evidence-based information.
- Contracts should stipulate a fair treatment of suppliers' as a principle. It is incredibly important that suppliers are guaranteed fair pay, with the real living wage as a minimum to keep suppliers out of poverty, ensure the right to food for all citizens, and ensure the public purse is not subsidising low wages through Universal Credit.

Q2. Do you agree there should be a new unit to oversee public procurement with new powers to review and, if necessary, intervene to improve the commercial capability of contracting authorities?

We would argue there is a need for a unit that has the power to review the capability of contracting authorities, *and also* the other bodies involved in contracting and those fulfilling the contracts. The unit could act as an inspection body, to measure and report on compliance with public sector standards, and ensure transparent reporting. (In some sectors it may be more appropriate for existing inspection bodies like Ofsted or the Care Quality Commission to act as inspector for their procurement contracts. In this case, the new unit could collect and publishing this data accordingly).

The Green Paper says the new unit would 'have regard to' public goods outcomes. This isn't strong enough – they must be *required to* inspect and report on stated and measurable public goods outcomes – we know that unless this is requirement it risks being overlooked.

Q3. Where should the members of the proposed panel be drawn from and what sanctions do you think they should have access to in order to ensure the panel is effective?

Sanctions could include the ability to end contracts early, financial penalties, and public performance listings.

Q4. Do you agree with consolidating the current regulations into a single, uniform framework?

Q5. Are there any sector-specific features of the UCR, CCR or DSPCR that you believe should be retained?

Q6. Do you agree with the proposed changes to the procurement procedures?

Q7. Do you agree with the proposal to include crisis as a new ground on which limited tendering can be used?

While we appreciate the need in a crisis to get systems moving quickly, we would draw attention to some examples from the Covid-19 pandemic to show the need to maintain high standards in awarding tenders. Sustain worked with the Good Law Project to shine a light on inadequate food parcels that were supposed to be a lifeline for the vulnerable. Our research found that the scheme was used to deliver unwanted and sometimes unsuitable supplies from elsewhere in the food system. The contents of the boxes did not meet a normal adult's weekly nutritional needs and failed to consider the requirements of those with serious medical conditions, including cancer, who may require additional nutrition. They were standardised and often failed to meet the needs of religious groups. For example, vulnerable Muslim families were sent pork sausages and bacon. It may be the case that the Government's preferred contractors, chosen without a tender process, may have reaped substantial profits in the process.

Government awarded the contract – worth £208million – without tender to Bidfood and Brakes. A subsequent FOI request has revealed that 4,724,611 boxes were distributed in England under the scheme, so Government paid £44 per box – almost double the normal retail value – a 69% mark-up on the £26 retail price of a supermarket delivering a similar box.

(See <https://goodlawproject.org/news/food-parcels/>)

We note the comments made by the judge on 19 February in a case taken to the high court about the award of PPE contracts: "...the public were entitled to see who this money was going to and what it was being spent on and how the contracts were awarded". [quoted by Rachel Reeves and reported in Guardian politics live today]

Q8. Are there areas where our proposed reforms could go further to foster more effective innovation in procurement?

Q9. Are there specific issues you have faced when interacting with contracting authorities that have not been raised here and which inhibit the potential for innovative solutions or ideas?

Q10. How can government more effectively utilise and share data (where appropriate) to foster more effective innovation in procurement?

Q11. What further measures relating to pre-procurement processes should the Government consider to enable public procurement to be used as a tool to drive innovation in the UK?

Q12. In light of the new competitive flexible procedure, do you agree that the Light Touch Regime for social, health, education and other services should be removed?

Q13. Do you agree that the award of a contract should be based on the "most advantageous tender" rather than "most economically advantageous tender"?

Yes. This allows for a greater weighting for social value and addressing the needs of local communities. The overall principles for 'Most advantageous' should be better clarified though, and include most advantageous for public health, addressing the climate and nature emergency, contributing to community wealth building, offering skills, localised buying and shorter supply chains.

'Most advantageous' should include the principles of progressive procurement and community wealth building popularly referred to as the 'Preston Model', including:

- Aiming to localise as much spend as possible, securing investment in local supply chains, developing skills within the region, and improving local economic competitiveness
- Linking tendering to the wider corporate priorities of a municipality. Most places have a priority around addressing unemployment and tackling climate change, for example

- Prioritising organisations with businesses models that keep wealth within communities and promote equity, including co-operatives, community interest companies, and locally-owned businesses.

Q14. Do you agree with retaining the basic requirement that award criteria must be linked to the subject matter of the contract but amending it to allow specific exceptions set by the Government?

Q15. Do you agree with the proposal for removing the requirement for evaluation to be made solely from the point of view of the contracting authority, but only within a clear framework?

Q16. Do you agree that, subject to self-cleaning fraud against the UK's financial interests and non-disclosure of beneficial ownership should fall within the mandatory exclusion grounds?

Q17. Are there any other behaviours that should be added as exclusion grounds, for example tax evasion as a discretionary exclusion?

Persistent failure by a contracted company to meet the expected standards should be grounds for exclusion from future contracts. When the quality of school meal boxes, provided to qualifying children during the periods of Covid-19 lockdown in lieu of a free school meal, was brought to the attention of the public and government via social media, the company responsible was named and shamed. But at the moment, through the existing contract resolution channels, the company is free to win a contract in another area.

Unfortunately, our significant experience, and that of our members, points to widespread non-compliance with the government buying standards for food at present. The threat of exclusion from contracts in future or elsewhere could act as a powerful deterrent, in tandem with more transparent reporting and other penalties such as fines.

Evidence of non-compliance with public procurement standards:

NHS Hospitals in England

The most recent government review into NHS food standards was conducted by the [Department of Health](#) in 2017. It found that 48% of hospitals were not compliant with the Government Buying Standards. A [Sustain investigation in 2018](#) into London hospitals found very similar levels of compliance – 50%. Hospitals aren't required to report nationally on food standards (as they are for other health and quality standards).

Central Government Departments

The last comprehensive review for this sector was the [Greening Government Commitments report for 2014-15](#) (see Annex 2) in which departments were required to report on the proportion of total spend that met the Government Buying Standards. Compliance ranged from 46% to 100%. Departments are no longer required to report with such detail, and more recent data is patchy. For the Department for Work and Pensions in 2015-16, [conformity was reported as 62%](#).

Schools

School food standards are set in legislation, and there is strong evidence that school food has improved significantly since standards were introduced (for example improved nutrient uptake in [those aged 4-7](#), [11-12 year olds](#), and in [secondary schools](#).) Unfortunately, we don't know the extent to which this is the case in all schools because – again – there is no formal or public reporting on how well schools comply. The Soil Association [State of the Nation report 2019](#) found that up to 60% of secondary schools in England could be failing to comply with the standards.

From our work, and that of our Alliance members, we are confident that standards that are set in statute are much better adopted than those that aren't, but without proper monitoring this is

guesswork. The key consequence of poor conformity with government standards is that we are missing out on opportunities to deliver a raft of Government targets and priorities. Buying UK-produced food from farmers that are protecting habitats and other environmental factors would help shore-up the aims of the 2020 Agriculture Bill. Buying sustainably-caught fish would support sustainable fishers and provide a market for less well-loved UK species (as per the aims of the Fisheries Bill). Ensuring meals follow sustainable diet principles would have a significant impact on the UK's greenhouse gas footprint and help normalize sustainable diets and deliver on our net-zero emissions target.

Q18. Do you agree that suppliers should be excluded where the person/entity convicted is a beneficial owner, by amending regulation 57(2)?

Q19. Do you agree that non-payment of taxes in regulation 57(3) should be combined into the mandatory exclusions at regulation 57(1) and the discretionary exclusions at regulation 57(8)?

Q20. Do you agree that further consideration should be given to including DPAs as a ground for discretionary exclusion?

Q21. Do you agree with the proposal for a centrally managed debarment list?

Q22. Do you agree with the proposal to make past performance easier to consider?

Q23. Do you agree with the proposal to carry out a simplified selection stage through the supplier registration system?

Q24. Do you agree that the limits on information that can be requested to verify supplier selfassessments in regulation 60, should be removed?

Q25. Do you agree with the proposed new DPS+?

We support with the wider use of Dynamic procurement. There is a large number of small and medium enterprises, co-operatives and independently owned businesses in the food sector that could benefit from having fairer access to public sector contracts. Dynamic procurement should facilitate this, including breaking contracts down into smaller lots to make them more attractive for local and small business.

In addition, the aims of dynamic procurement must be supported in other ways to ensure smaller suppliers can access contracts, including building capacity in small businesses, training and ensuring personnel are aware of contracting opportunities, and paying suppliers' promptly.

Q26. Do you agree with the proposals for the Open and Closed Frameworks?

Q27. Do you agree that transparency should be embedded throughout the commercial lifecycle from planning through procurement, contract award, performance and completion?

Yes – at the moment lack of transparency is a significant problem and preventing low standards being recognised and addressed.

Whilst academic studies indicate improvement in school food over the last decade, the truth is we don't know the extent to which this is the case because there is no formal or public reporting on how well schools comply. The most recent Soil Association [State of the Nation report 2019](#) [1] suggests that up to 60% of secondary schools in England could be failing to comply with the national School Food Standards.

In answer to Q17 we outlined a number of examples of public sector procurement failing to meet the required standards. Contracting organisations should know whether the company they intend to employ has a track-record of compliance and excellence. This will raise standards overall, ensure a level playing field, and ensure better value for money for the taxpayer. It is our

opinion that clear, transparent and accessible reporting of performance is a preferable solution for driving up standards than financial or other penalties.

Q28. Do you agree that contracting authorities should be required to implement the Open Contracting Data Standard?

Yes – but the current proposals don't go far enough. Suppliers and contracting authorities must be required to report on KPIs covering all mandatory requirements for service delivery, and reporting on how they meet the proposed legal principles including public good, social value, transparency, integrity, efficiency, fair treatment of suppliers, non-discrimination, and contributing to the government's net zero commitment. This information should be accessible to the public.

In 2018 Sustain launched an investigation into the fish served by the major catering companies in the UK fulfilling public sector contracts. Our aim was to ascertain whether sustainable fish was being served, as per the mandatory government buying standards. We were rebuffed by all but one of them on the grounds that they weren't required to provide information. We would recommend that companies being awarded taxpayer funds should be required to provide transparent information on how they are spending those funds and whether they are delivering on the standards they are supposed to be upholding. They should also be subject to the same FOI legislation in regard to their public service contracts as any public sector provider would be.

Q29. Do you agree that a central digital platform should be established for commercial data, including supplier registration information?

Q30. Do you believe that the proposed Court reforms will deliver the required objective of a faster, cheaper and therefore more accessible review system? If you can identify any further changes to Court rules/processes which you believe would have a positive impact in this area, please set them out here.

Q31. Do you believe that a process of independent contracting authority review would be a useful addition to the review system?

Q32. Do you believe that we should investigate the possibility of using an existing tribunal to deal with low value claims and issues relating to ongoing competitions?

Q33. Do you agree with the proposal that pre-contractual remedies should have stated primacy over post-contractual damages?

Q34. Do you agree that the test to list automatic suspensions should be reviewed? Please provide further views on how this could be amended to achieve the desired objectives.

Q35. Do you agree with the proposal to cap the level of damages available to aggrieved bidders?

Q36. How should bid costs be fairly assessed for the purposes of calculating damages?

Q37. Do you agree that removal of automatic suspension is appropriate in crisis and extremely urgent circumstances to encourage the use of informal competition?

Q38. Do you agree that debrief letters need no longer be mandated in the context of the proposed transparency requirements in the new regime?

Q39. Do you agree that:

- businesses in public sector supply chains should have direct access to contracting authorities to escalate payment delays?
- there should be a specific right for public bodies to look at the payment performance of any supplier in a public sector

contract supply chain? • private and public sector payment reporting requirements should be aligned and published in one place?

Q40. Do you agree with the proposed changes to amending contracts?

Q41. Do you agree that contract amendment notices (other than certain exemptions) must be published?

Q42. Do you agree that contract extensions which are entered into because an incumbent supplier has challenged a new contract award, should be subject to a cap on profits?

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Sustain: The alliance for better food and farming advocates food and agriculture policies and practices that enhance the health and welfare of people and animals, improve the working and living environment, enrich society and culture and promote equity. We represent around 100 national public interest organisations working at international, national, regional, and local level. www.sustainweb.org