
Committee Stage: Thursday 19 January 2023

Procurement Bill [Lords] (Amendment Paper)

This document lists all amendments tabled to the Procurement Bill [Lords]. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

★ New Amendments.

New Amendments: 9 to 12 and NC5 to NC8

Florence Eshalomi

9

- ★ Clause 12, page 9, line 24, after “money” insert “, including value that is social value within the meaning of the Public Services (Social Value) Act 2012, overall providing the optimum balance of economy, efficiency, effectiveness and equity”

Member’s explanatory statement

This amendment would require social value to be considered in the procurement objectives.

Florence Eshalomi

10

- ★ Clause 12, page 9, line 25, after “benefit” insert “and public value, including in relation to benefits and value contributing to socio-economic development, to be realised over time and in relation to areas of public responsibility of other contracting authorities”

Member’s explanatory statement

This amendment would require social value to be considered in the procurement objectives.

Florence Eshalomi

1

Clause 12, page 9, line 36, after “enterprises” insert “and co-operative societies”

Member’s explanatory statement

This amendment, together with Amendments 2 and 3, would ensure that the barriers to cooperative societies are considered by contracting authorities during the procurement process.

Florence Eshalomi

7

Clause 13, page 10, line 12, after “environmental” insert “, cyber security”

Member’s explanatory statement

This amendment would make cyber security one of the strategic national priorities for procurement.

Florence Eshalomi

11

★ Clause 13, page 10, line 12, after “environmental” insert “, national security”

Member’s explanatory statement

This amendment would add national security as part of procurement principles.

Florence Eshalomi

12

★ Clause 23, page 18, line 4, at end insert—

“(3A) Where—

(a) the contracting authority is the Ministry of Defence, and

(b) the contract concerns defence or security,

the award criteria must be weighted so as to advantage United Kingdom suppliers.”

Member’s explanatory statement

This amendment would give advantage to UK based suppliers in the case of defence or security contracts under the Ministry of Defence.

Florence Eshalomi

6

Clause 41, page 28, line 33, at end insert—

“(2A) Subsection (2) does not apply where the supplier has been excluded on the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security).”

Member's explanatory statement

This amendment would prevent the award of direct contracts to excluded suppliers when the supplier was excluded as a threat to national security.

Florence Eshalomi

5

Clause 44, page 30, line 25, at end insert—

- “(4) Any Minister, peer or senior civil servant involved in recommending a supplier for a contract under section 41 or 43 must make a public declaration to the Cabinet Office of any private interest in that supplier.”

Member's explanatory statement

This amendment would implement the recommendation of the National Audit Office that any contracts awarded under emergency provisions or direct awards should include transparency declarations.

Florence Eshalomi

4

Clause 52, page 35, line 23, leave out “£5 million” and insert “£2 million”

Member's explanatory statement

This amendment would reinstate the threshold for publishing the contracts in major projects at £2m.

Marsha De Cordova

8

Clause 56, page 38, line 38, at end insert—

- “(5A) For all procurement which is intended for use by natural persons, whether the general public or staff of the contracting authority, the technical specifications in the procurement documents must, except in duly justified cases, be drawn up so as to take into account accessibility criteria for disabled persons or design for all users.”

Member's explanatory statement

This amendment would reproduce on the face of the Bill requirements for accessibility criteria for

disabled persons which are included in the Public Contacts Regulations 2015, which this Bill will replace.

Florence Eshalomi

2

Clause 85, page 57, line 27, after “enterprises” insert “and co-operative societies”

Member’s explanatory statement

See explanatory statement to Amendment 1.

Florence Eshalomi

3

Clause 119, page 77, line 24, at end insert—

““co-operative society” means—

- (a) a society registered as a co-operative society under the Co-operative and Community Benefit Societies Act 2014, or
- (b) a pre-commencement society (within the meaning of that Act) that meets the condition in section 2(2)(a)(i) of that Act;”

Member’s explanatory statement

See explanatory statement to Amendment 1.

Florence Eshalomi

NC1

To move the following Clause—

“National Security Procurement Committee

- (1) The Secretary of State must establish a committee, chaired by the Minister for Resilience, to consider (a) national security and (b) cyber security within the Government’s supply chain.
- (2) The committee must consider whether suppliers should be excluded on the basis of the discretionary exclusion ground in paragraph 14 of Schedule 7 (threat to national security).
- (3) The committee must review ongoing major government contracts, with focus on threats to national and cyber security.

- (4) The committee must meet no less than once every three months.”

Member’s explanatory statement

This new clause will mandate that a new committee must be set up with a view to proactively identifying potential security threats within the Government’s supply chain.

Florence Eshalomi

NC2

To move the following Clause—

“Procurement principles

- (1) In carrying out a procurement, a contracting authority must pursue the following principles—
- (a) promoting the public good, by having regard to the delivery of strategic national priorities including economic, social, environmental and public safety priorities,
 - (b) value for money, by having regard to the optimal whole-life blend of economy, efficiency and effectiveness that achieves the intended outcome of the business case,
 - (c) transparency, by acting openly to underpin accountability for public money, anti-corruption and the effectiveness of procurements,
 - (d) integrity, by providing good management, preventing misconduct, and control in order to prevent fraud and corruption,
 - (e) fair treatment of suppliers, by ensuring that decision-making is impartial and without conflict of interest, and
 - (f) non-discrimination, by ensuring that decision-making is not discriminatory.
- (2) If a contracting authority considers that it is unable to act in accordance with any of these principles in a particular case, it must—
- (a) take all reasonable steps to ensure it does not put a supplier at an unfair advantage or disadvantage, and
 - (b) publish a report within 90 days setting out the principles with which it could not act in accordance and its reasons.”

Member’s explanatory statement

This new clause would require contracting authorities to pursue a series of principles when carrying out procurements

Florence Eshalomi

NC3

To move the following Clause—

“Public interest

- (1) Where a contracting authority is considering outsourcing public services that are at the time of consideration delivered in-house or where contracts are due for renewal, the contracting authority must ensure that

outsourcing or recontracting passes a public interest test and provides greater public value than direct service provision.

- (2) As part of the duty in subsection (1), the contracting authority must demonstrate to the public, service users and its employees that it has thoroughly assessed the potential benefits and impact of outsourcing the service in question against a public sector comparator with assessments being based on criteria to be set by the Secretary of State from time to time, including taking a five year consideration of—
 - (a) service quality and accessibility;
 - (b) value for money of the expenditure;
 - (c) implications for other public services and public sector budgets;
 - (d) resilience of the service being provided;
 - (e) implications for the local economy and availability of good work in relevant sub-national labour markets;
 - (f) implications for public accountability and transparency;
 - (g) effect on employment conditions, terms and standards within the provision of the service to be outsourced and when outsourced;
 - (h) implications for public sector contributions to climate change targets;
 - (i) implications for the equalities policies of the contracting authority and compliance with the public sector equality duty.
- (3) The contracting authority and the supplier of the outsourced service must monitor the performance of any contracted service against the public interest test and the stated objectives set by the contracting authority pre-procurement to demonstrate that outsourcing the service in question has not resulted in a negative impact on any of the matters mentioned in subsection (2)(a) to (i).
- (4) The Secretary of State must from time to time set budget thresholds for when a public interest test would be required."

Member's explanatory statement

The new clause would create a process to ensure that contracting authorities safeguard the public interest when considering whether or not to outsource or recontract services.

Bob Seely

NC4

To move the following Clause—

"Dependence on high-risk states

- (1) The Secretary of State must within six months publish a plan to reduce the dependence of public bodies upon goods and services which originate in whole or in part in a country considered by the United Kingdom as a high risk sourcing country.
- (2) For the purposes of this section, a country is considered a high risk sourcing country by the United Kingdom if it is defined as either a systemic competitor or a threat in the latest Integrated Review of Security, Defence, Development and Foreign Policy."

Florence Eshalomi

NC5

★ To move the following Clause—

“Carbon reduction plans

- (1) Subject to subsection (4), contracting authorities must obtain, assess and publish a carbon reduction plan from all suppliers under consideration for qualifying contracts before entering into a public contract with any supplier.
- (2) In this section, “qualifying contract” means—
 - (a) a public contract with an average value of more than £5 million per annum (excluding VAT) over the duration of the contract,
 - (b) any contract to be awarded under a framework agreement anticipated to be greater than £5 million per annum (excluding VAT) in value, or
 - (c) any contract to be awarded by reference to a dynamic market which is anticipated to be greater than £5 million per annum (excluding VAT) in value.
- (3) For a qualifying contract of the type referred to in subsection (2)(a), a “carbon reduction plan” must contain—
 - (a) the supplier’s current greenhouse gas emissions,
 - (b) confirmation of the supplier’s commitment to achieving net zero greenhouse gas emissions by 2050 for their UK supply chain, operations, products and services,
 - (c) intermediate targets for reductions in their greenhouse gas emissions at no more than 5 year intervals, beginning with the date of award of the contract,
 - (d) as far as they are able, the greenhouse gas emissions attributable to performance of the contract,
 - (e) as far as they are able, targets for reductions in those greenhouse gas emissions, and
 - (f) other environmental management measures in effect which will be applied when performing the contract.
- (4) For the qualifying contracts of the type described in subsection (2)(b) and (2)(c), a carbon reduction plan should contain the matters specified in subsection (3)(a), (b) and (c) only.
- (5) In complying with requirements imposed by the regulations, a contracting authority must have regard to guidance prepared from time to time by an appropriate authority.
- (6) “Greenhouse gas” has the meaning given in section 92 of the Climate Change Act 2008, and “emissions” has the meaning given in section 97 of that Act.”

Member’s explanatory statement

This new clause would require company-level carbon reduction plans for bidders for certain larger contracts, including information and targets from suppliers on the emissions attributable to the performance of the contract. It also specifies that the Carbon Reduction Plan must be a key performance indicator for certain contracts.

Florence Eshalomi

NC6

★ To move the following Clause—

“Granting of relief on an application for judicial review of a contracting authority’s decision

Section 31(2A) of the Senior Courts Act 1981 does not apply in the case of an application for judicial review of a contracting authority’s decision to award a contract if—

- (a) the contracting authority breaches the principle of non-discrimination in section 89, and
- (b) the authority’s breach is caused by a representation to the contracting authority by a Member of Parliament, Member of the House of Lords, or senior civil servant.”

Member’s explanatory statement

This new clause would ensure that if an MP, Lord or senior civil servant lobbied a contracting authority to award a contract to a certain bidder and a court held that this had resulted in unequal treatment then the court would be able to grant relief.

Florence Eshalomi

NC7

★ To move the following Clause—

“Review of procurement of Fleet Solid Support Ships

- (1) By the end of 2023, the Secretary of State for Defence must conduct a review of the procurement of Fleet Solid Support Ships.
- (2) The review must consider and report on—
 - (a) the total amount of expected UK build work for each Fleet Solid Support ship,
 - (b) the number of UK jobs and Spanish jobs that have been created so far as a result of awarding the contract for Fleet Solid Support ships to “Team Resolute”,
 - (c) the number of UK SMEs and Spanish SMEs that have been contracted to work on Fleet Solid Support ships so far by Navantia UK,
 - (d) whether Navantia UK are on track to fulfil guarantees on the UK content, UK steel targets and social value,
 - (e) whether Navantia UK are on track to meet timelines to complete the project, and
 - (f) any other matter which the reviewer considers appropriate.
- (3) The Secretary of State must report to Parliament on this review and publish a report on the review’s findings by the end of 2023.”

Member’s explanatory statement

This new clause would mandate a review of the procurement of Fleet Solid Support Ships.

Florence Eshalomi

NC8

★ To move the following Clause—

“Audit of waste in Ministry of Defence procurement

- (1) The National Audit Office (NAO) must produce and publish a report setting out any instances of waste in Ministry of Defence procurement in the period of 5 years ending with the day on which this Act is passed.
- (2) In this section, “waste in Ministry of Defence procurement” means—
 - (a) overspend on initially planned budgets,
 - (b) assets being withdrawn or scrapped or prepaid services terminated,
 - (c) a contract being cancelled,
 - (d) a contract being extended beyond the initially agreed timescale, or
 - (e) administrative errors which have had a negative financial impact.
- (3) The report must include recommendations on how better management of contracts can reduce the loss of public money.
- (4) Within one month of the publication of the report, the Secretary of State must report to Parliament on whether the NAO’s recommendations have been accepted or rejected, with reasoning in either case.”

Member’s explanatory statement

This new clause would require the NAO to conduct an audit of waste in Ministry of Defence procurement and to make recommendations on how better management of contracts can reduce the loss of public money, and the Secretary of State to report to Parliament on whether its recommendations have been accepted.

Order of the House

[9 January 2023]

That the following provisions shall apply to the Procurement Bill [Lords]:

Committal

1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Committee

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Thursday 23 February 2023.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Proceedings on Consideration and on Third Reading

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.

Programming committee

6. Standing Order No. 83B (Programming committees) shall not apply to proceedings in Committee of the whole House, to any proceedings on Consideration or to proceedings on Third Reading.

Other proceedings

7. Any other proceedings on the Bill may be programmed.
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