

Procurement Bill [HL]

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Clause 12

BARONESS HAYMAN OF ULLOCK
LORD COAKER

Page 9, line 12, leave out subsections (4) to (6) and insert—

“(4) The national procurement policy statement, or any revision to the national procurement policy statement, does not have effect unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

Member’s explanatory statement

The purpose of this amendment is to subject the national procurement policy statement, and amendments to the national procurement policy statement, to the affirmative procedure, so that the existing national procurement policy statement remains in force if a new statement is rejected.

After Clause 13

BARONESS HAYMAN OF ULLOCK
LORD COAKER

Insert the following new 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 Act, “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.

After Clause 13 - continued

- (3) For a qualifying contract of the type referred to in subsection (2)(a), a “carbon reduction plan” should 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 (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 amendment and another to Clause 50 put public procurement notice 06/21 on a statutory footing by requiring company-level carbon reduction plans for bidders for certain larger contracts, broadening the requirements to include all contracting authorities and to request information and targets from suppliers on the emissions attributable to the performance of the contract. They also specify that the Carbon Reduction Plan must be a key performance indicator for certain contracts.

Clause 14

LORD HUNT OF KINGS HEATH

Page 11, line 5, at end insert—

- “(5) A contracting authority must consider publishing a planned procurement notice where—
- (a) no significant barriers exist to publishing a planned procurement notice, and
 - (b) no detriment to service recipients would occur due to publishing a planned procurement notice.”

Member’s explanatory statement

This amendment would create a presumption that contracting authorities should publish a planned procurement notice unless there is good reason not to.

Clause 22

LORD DAVIES OF BRIXTON

Page 16, line 1, leave out paragraph (d)

Member's explanatory statement

The amendment, along with the other amendment to page 16, line 1, in the name of Lord Davies of Brixton, provides that consideration of value for money does not override other procurement objectives.

Page 16, line 1, at end insert—

“(5A) In setting award criteria related to price, other costs or value for money, a contracting authority must—

- (a) pay due regard to the procurement objectives listed in section 11 and any national procurement policy statement published under section 12; and
- (b) satisfy itself that the award criteria related to price, other costs or value for money do not unnecessarily limit the potential achievement of social and environmental goals in particular.

(5B) Award criteria consisting solely of the consideration of price, other costs or value for money do not meet the requirements of section (5A), except where the economic, innovation-related, environmental, social or employment-related considerations of the procurement are captured through technical specifications in accordance with section 24.”

Member's explanatory statement

The amendment, along with the other amendment to page 16, line 1, in the name of Lord Davies of Brixton, provides that consideration of value for money does not override other procurement objectives.

LORD BEST

Page 16, line 11, at end insert—

“(7) In establishing an assessment methodology under subsection (3), the assessment of price, other costs or value for money criteria cannot be assessed, directly or indirectly, by reference to any other tender under assessment.”

Member's explanatory statement

This amendment would prohibit the use of relative price evaluation models by contracting authorities for public contracts. This is intended to help prevent “race to the bottom” behaviours by bidders and help public authorities achieve safe, quality and value for money outcomes.

After Clause 25

LORD HUNT OF KINGS HEATH

Insert the following new Clause –

“Review of section 18

- (1) A Minister of the Crown must, within the period of three years beginning on the day on which this Act is passed, appoint a person to conduct a review of the impact of section 18 of this Act.
- (2) The review must have particular regard to the extent to which the introduction of the “most advantageous tender” has impacted the provision within contracts of –
 - (a) social value, and
 - (b) ability to meet the needs of service recipients.”

Member’s explanatory statement

This amendment would provide for a review of the change from most economically advantageous tender (MEAT) to most advantageous tender (MAT), particularly the impact on delivery of social value, and quality of service provision.

After Clause 30

LORD HAIN

Insert the following new Clause –

“Guidance on suppliers which have acted unlawfully or unethically

The Secretary of State must publish guidance advising that contracting authorities do not consider any tenders from suppliers which the Secretary of State deems to have acted –

- (a) unlawfully, in relation to either UK law or the law of the country in which the supplier is operating, or
- (b) unethically,

and identifying the suppliers which the Secretary of State deems to have so acted.”

Member’s explanatory statement

This amendment would require the Secretary of State to publish guidance on any suppliers which they deem to have acted unlawfully or unethically, advising contracting authorities not to consider their tenders.

Clause 50BARONESS HAYMAN OF ULLOCK
LORD COAKER

Page 31, line 13, at end insert –

“(3A) For qualifying contracts, one of the key performance indicators must be compliance with the carbon reduction plan.”

Clause 50 - continued

Page 31, line 13, at end insert –

- “(3A) For the purpose of subsection (1), at least one of the key performance indicators must assess the supplier’s performance of a contract against –
- (a) its contribution towards compliance with –
 - (i) section 1 of the Climate Change Act 2008 (UK net zero emissions target), or
 - (ii) section 5 of the Environment Act 2021 (environmental targets), or
 - (b) the need to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008.”

Member’s explanatory statement

This amendment requires that for public contracts in scope of key performance indicators (KPIs) falling below the threshold for mandatory Carbon Reduction Plans (see the other amendment to this clause in the name of Baroness Hayman of Ullock), at least one KPI should assess supplier performance against climate or environmental considerations.

Schedule 7

LORD HAIN

Page 98, line 36, at end insert –

“Financial and economic misconduct

- 3A A discretionary exclusion ground applies to a supplier if the decision-maker considers that there is sufficient evidence that the supplier or a connected person has engaged in conduct (whether in or outside the United Kingdom) constituting (or that would, if it occurred in the United Kingdom, constitute) any of the following offences –
- (a) an offence of common law in Scotland of theft, fraud, extortion, robbery, theft by housebreaking, housebreaking with intent to steal, or reset;
 - (b) an offence under any of the following sections of the Theft Act 1968 –
 - (i) sections 7 to 13 (theft, robbery, burglary, etc);
 - (ii) sections 17 to 21 (fraud and blackmail);
 - (iii) sections 22 and 23 (offences relating to stolen goods);
 - (iv) section 24A (dishonestly retaining a wrongful credit);
 - (v) section 25 (going equipped for stealing etc);
 - (c) an offence under any of the following sections of the Theft Act (Northern Ireland) 1969 (c. 16 (N.I.)) –
 - (i) sections 7 to 13 (theft, robbery, burglary, etc);
 - (ii) sections 17 to 20 (fraud and blackmail);
 - (iii) sections 21 and 22 (offences relating to stolen goods);
 - (iv) section 23A (dishonestly retaining a wrongful credit);
 - (v) section 24 (going equipped for stealing etc);
 - (d) an offence under section 3 of the Theft Act 1978 (making off without payment);

Schedule 7 - continued

- (e) an offence under section 5 of the Theft (Northern Ireland) Order 1978 (S.I. 1978/1407 (N.I. 23)) (making off without payment);
- (f) an offence under section 58 of the Civic Government (Scotland) Act 1982 (convicted thief in possession);
- (g) an offence under section 113 of the Representation of the People Act 1983 (bribery of electors);
- (h) an offence under section 327, 328 or 329 of the Proceeds of Crime Act 2002 (money laundering offences);
- (i) an offence under section 86, 88 or 92 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;
- (j) an offence under Schedule 3 of the Anti-terrorism, Crime and Security Act 2001 (sanctions evasion offences);
- (k) an offence under section 2, 3, 4, 6 or 7 of the Fraud Act 2006 (fraud offences);
- (l) an offence under section 993 of the Companies Act 2006 (fraudulent trading);
- (m) an offence under section 1, 2, 6 or 7 of the Bribery Act 2010 (bribery offences);
- (n) an offence under section 49 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (offences relating to articles for use in fraud)."

Member's explanatory statement

This amendment is intended to allow relevant Ministers and Contracting Authorities the power to exclude suppliers from procurement where they have evidence of financial and economic criminal activity, but there has not yet been a conviction by a court.

Clause 84**LORD HUNT OF KINGS HEATH**

Page 54, line 23, at end insert –

“(3A) Where a contract is lower in value than £2 million, a contracting authority must consider publishing a pipeline notice where service quality and value for money would be improved by enabling a wider range of providers to participate in the procurement process.”

Member's explanatory statement

This amendment would set conditions where publishing a pipeline notice should be considered where the contract falls below the £2 million threshold.

After Clause 88

BARONESS HAYMAN OF ULLOCK
LORD COAKER

Insert the following new Clause—

“Procurement carbon emissions report

- (1) A Minister of the Crown from each of the ministerial departments must prepare an annual report to be laid before Parliament setting out—
 - (a) the estimated scope 1, 2 and 3 carbon dioxide emissions that are likely to be produced or have been produced during the execution of each contract entered into by—
 - (i) the ministerial department, and
 - (ii) public authorities for which the department has responsibility, and
 - (b) the estimated cumulative annual scope 1, 2 and 3 carbon dioxide emissions that are likely to be produced or have been produced by the execution of contracts overseen by—
 - (i) the ministerial department, and
 - (ii) public authorities for which the department has responsibility.
- (2) The first report under this section must be laid before Parliament no later than 2 years after this section comes into force.”

Member’s explanatory statement

This amendment requires each ministerial department to calculate the estimated carbon emissions from public contracts entered into and to lay the report before Parliament on an annual basis. The aim of this is to assess the impact of the procurement regime from an emissions perspective.

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29 June 2022
