

DEMOS

**VALUE
ADDED:**
HOW BETTER
GOVERNMENT
PROCUREMENT CAN
BUILD A FAIRER BRITAIN

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OCTOBER 2019

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EXECUTIVE SUMMARY

From the collapse of Carillion to the renationalisation of probation services, central government procurement has had a rocky few years. But whilst these events have highlighted a system in need of reform, procurement can still be an enormous force for good.

With current spend on external suppliers at £284bn,¹ procurement is the UK government's largest expenditure, equal to 13.4% of the UK's GDP.² Influencing how this money is spent represents a significant opportunity for government to shape the nature of business and the wider economy. This report looks at how central government could use public procurement more strategically to bring about a fairer economy and more efficient, effective government.

We find that:

- The government could more effectively 'procure for good' or 'buy economic change' by more deeply embedding social value into the procurement process for the provision of goods, works and services.
- This can be used to encourage suppliers to undertake activities such as employing people on a real living wage, reducing carbon emissions, using more inclusive recruitment strategies, and offering training opportunities. There are encouraging early signs of these considerations being taken into account during procurement rounds.
- Social value procurement and current EU legislation, designed to promote competition and transparency, could help tackle aggressive tax avoidance.
- Twenty five of the government's thirty four Strategic Suppliers (73.5%) are part of a corporate

group including one or more subsidiaries in 14 tax havens (not including US mainland, EU or Single Market jurisdictions), according to public records.³ Seventeen of those (50%) were part of a corporate group with subsidiaries in British Overseas Territories or Crown Dependencies, such as the British Virgin Islands and Guernsey. Figures for 20 of the 25 tax-haven-linked Strategic Suppliers show that they were awarded more than £41 billion worth of government contracts between 2011 and 2017.

- Despite efforts by the government, UK public sector markets are still relatively uncompetitive and increasingly reliant on larger suppliers. As a result, more should be done to increase competition and level the playing field for small and medium-sized enterprises (SMEs) and voluntary, community and social enterprise organisations (VCSEs) in public sector markets.

To deepen and embed social value in public procurement, we recommend that:

Recommendation 1: Government should establish priority social value standards for departments in order to pursue select, strategic cross-government objectives, for example related to carbon emissions and fair tax practice. Departments should produce their own social value standards which would build upon these in matters relevant to their work.

Recommendation 2: Central government departments should include social value bare minimum standards that are pass or fail in the pre-qualification criteria (i.e. determines whether a company is invited to submit a full bid to be considered in an evaluation process by procurement teams).

1. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018, p.2

2. Figure derived from ONS data.

3. 19 overseas jurisdictions used by at least one of the companies were identified which appeared on the Tax Justice Network's Corporate Tax Haven Index 2019 (<https://corporatetaxhavenindex.org/introduction/cthi-2019-results> accessed 10/06/2019). Of those, 14 were non-US mainland, -EU or -Single Market jurisdictions, including six British Overseas Territories and Crown Dependencies. Ten of the 14 (including the six UK-linked territories) were among the 13 jurisdictions with the highest "haven score" calculated by the Index. Each of the 19, plus Puerto Rico, St Kitts and Nevis, Barbados and the US Virgin Islands (also amongst jurisdictions used by Strategic Suppliers), were also on the Financial Secrecy Index 2018 (<https://www.financialsecrecyindex.com/introduction/fsi-2018-results>; accessed 10/06/2019), also compiled by TJN, with "secrecy scores" concentrated in the top half of the sample, with the lowest-scoring non-EU jurisdiction being Jersey. The conclusions reported above do not change whether the list of 19 or the list of 23 is used, because every group which uses one of the additional four also uses one of the other non-US/EU/SM tax havens.

Bare minimum social value standards would ensure best practice across the market, and leave the qualitative evaluation stage for suppliers to become more innovative with social value.

To ensure that more small suppliers bid for contracts, we recommend that:

Recommendation 3: The three central government departments with the highest procurement spend (Department of Health and Social Care, Ministry of Defence and Department for Transport) should create a Small Medium Enterprise (SME) advisory panel to help departments make it easier for SMEs to bid and win contracts with them. This should consider, among other things, how to ensure new social value criteria is achievable for SMEs.

To discourage suppliers to government from using international tax agreements to reduce their tax bill we recommend that:

Recommendation 4: Social value minimum standards - see recommendation 2 - for public procurement should include criteria relating to a bidder's exchequer contribution. For example, bidders could be expected to meet a certain Effective Tax Rate to pre-qualify for that procurement round.

Recommendation 5: The government should take advantage of existing provisions in EU competition law to ensure that companies do not gain an unfair advantage over their competitors by using international tax arrangements. Contractors part of a group wholly or in part owned in tax havens, or which maintains one or more subsidiaries in jurisdictions credibly identified as tax havens - for example, by inclusion on the EU's 'black' or 'grey' lists - should be required to show that their usage of such jurisdictions does not entail a tax position which provides a competitive advantage relative to companies not using jurisdictions in this manner.

Recommendation 6: The government should take advantage of anti-corruption provisions to exclude from any public contract a supplier whose ultimate beneficial ownership is secret above the value of 5%, in order to ensure that no conflict of interest is entailed.

To improve the transparency of UK public procurement we recommend that:

Recommendation 7: Central government should move to an Open Data Model for spending data. This should include Open Data standards covering every government contract and award notice, and a clear, transparent register of public sector procurement authorities.

Recommendation 8: To incentivise buy-in from companies for the Open Data Model, the extra administrative burdens of transparency should be written into the costs of the contract by default.

Recommendation 9: The National Audit Office should conduct an annual report on central government procurement transparency, presented to Parliament. This should include a 'league table' ranking of departments, with the bottom three departments having to make an oral statement to the House.

Recommendation 10: The requirements of the Freedom of Information Act (FOIA) should be extended to public sector contractors, through an amendment to the FOIA stipulating that all information held in connection with the performance or future performance of the contract should be considered under the domain of the FOIA.

INTRODUCTION

PROCURING A NEW POLITICAL ECONOMY

“Markets need rules and these rules need to be updated to reflect our changing economy”

The Conservative Party Manifesto, 2017⁴

“It could not be clearer, business as usual isn't working. And when the rules of the game aren't working for the overwhelming majority, the rules of the game need to change”

Jeremy Corbyn, CBI Conference, 2018⁵

Politicians of all stripes regularly decry the unfairness of our economy. This is unsurprising: the last decade has been the worst for pay growth since the Napoleonic Wars.⁶ Too many are being denied the right to a stable job and affordable housing, whilst those at the top often appear to operate by an entirely different set of rules.⁷

Large multinational companies, for example, continue to squeeze their tax contributions ever lower: the OECD estimate that US\$100–\$240 billion is lost globally in revenue each year from base erosion and profit shifting by multinational companies.⁸ From Philip Green to Sports Direct, business has been hit by scandal after scandal, with seemingly few consequences for those implicated.⁹ This reinforces the sense that we are not all in it

together, hence calls across the political spectrum for change.

This report explores what role procurement policy should play in delivering this change. Its contribution should not be underestimated: last year the public sector spent £284bn on procurement, more than it spends on benefits and public sector salaries, and equal to 13.4% of GDP.¹⁰ This spending power represents an opportunity for the government to nurture best practice in the market, raising economic standards without having to rely on state-administered redistribution. This is desirable: for too long progressives have been reliant upon redistribution as a means of delivering change, when this has often been ineffective at addressing structural inequalities.

4. The Conservative Party Manifesto, 2017

5. Jeremy Corbyn, CBI Conference, 2018

6. The Resolution Foundation, Public and family finances squeezes extended well into the 2020s by grim Budget forecasts, Press Release, 2017

7. The Resolution Foundation, A New Generational Contract: The final report of the Intergenerational Commission, 2018

8. The World Bank, The Changing Nature of Work, The World Development Report, 2019, p.43

9. BBC, Sir Philip Green: From 'king of the High Street' to 'unacceptable face of capitalism', 2018; BBC, Sports Direct staff 'not treated as humans', says MPs' report, 2016

10. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018

In response to public procurement being rocked by a number of scandals - from the collapse of public-sector contractor Carillion to “fundamentally flawed” probation contracts being brought back in house¹¹ – the Cabinet Office earlier this year published the Outsourcing Playbook. This aims to improve and strengthen the way government procures, with the aim of reducing the risk of similar mishaps in the future.¹² But whilst Demos welcomes these steps, they could be just the beginning; properly harnessed, public procurement could play a central role in building a fairer economy.

In the past decade procurement law has been reformed at a domestic and European level to enable the state to procure on ‘social value’ objectives as well as on price. Social value is defined as “the economic, social and environmental well-being of the relevant area”.¹³ Demos has a long history of promoting social value and welcomes these developments.¹⁴

Since their introduction in the Public Services (Social Value) Act 2012, these provisions have been enthusiastically adopted by local authorities in particular, with some – notably Preston City Council in Lancashire – utilising them to develop radically new ‘community wealth building’ growth strategies.¹⁵ Indeed, the government’s recent Civil Society strategy explicitly commits to extending the social value provisions to ensure that public procurement can deliver more social and economic value.¹⁶

But it is important for other reasons too. Our ability to conduct economic and social analysis is being transformed by new data collection techniques that offer the prospect of real-time data and thus real-time analysis.¹⁷ Procurement data collected by government has an important role to play in this and could eventually lead to us being able to accurately analyse what the government spends and purchases in real-time.¹⁸ It is therefore clear that improving public procurement is central to the task of creating a modern, transparent and efficient government, as well as that of delivering economic justice.

This report examines the role of better procurement in delivering both a fairer economy and a more efficient state across three chapters:

Chapter One outlines the state of government procurement in 2019, providing both policy background and an analysis of how government currently procures.

Chapter Two introduces some best practice principles of good procurement, examining the opportunities for reform.

Chapter Three sets out our agenda for fairer procurement, which we hope could lead to a fairer economy and a more efficient state.

Alongside in-depth desk-based research, this report is underpinned by a series of semi-structured qualitative expert interviews and a private roundtable event that took place in March 2019. This event was attended by a number of procurement policy experts, academics and business leaders.

11. BBC, Probation services: Part-privatised system ‘flawed’, 2019

12. Cabinet Office, Chancellor of the Duchy of Lancaster speech to Reform, 2018; Cabinet Office, Open Consultation: Social value in government procurement, 2019; HM Government, Civil Society Strategy: Building a Future That Works for Everyone, 2018; Government Commercial Function, The Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions and Contracting, 2019

13. The Department for Digital, Culture, Media and Sports, The Public Services (Social Value) Act 2012: An introductory guide for commissioners and policymakers, 2018

14. Claudia Wood and Daniel Leighton, Measuring Social Value: The gap between policy and practice, Demos, 2010; Claudia Wood and Max Wind-Cowie, Measuring up the social value of sponsorship, Demos, 2012; Claudia Wood, The Social Value of Sheltered Housing, Demos, 2018

15. Alan Lockey and Ben Glover, The Wealth Within, Demos, 2019

16. HM Government, Civil Society Strategy: Building a Future That Works for Everyone, 2018, p.115

17. KPMG, Data-Driven Government, 2017

18. Warren Smith, Improving and Opening up Procurement and Contract Data, Government Digital Service, Webpage, 2015

CHAPTER 1

GOVERNMENT

PROCUREMENT IN 2019

Recent years have seen significant reforms to procurement policy in the UK. These have sought to improve the efficacy of contract management, increase competition, boost the transparency of procurement and strengthen the position of social value in the process of contracting out. This chapter provides a brief overview of these changes across four sections:

- What is public sector procurement?
- What is the public sector spending and buying?
- How competitive are UK public sector markets?
- How is public procurement regulated?

WHAT IS PUBLIC SECTOR PROCUREMENT?

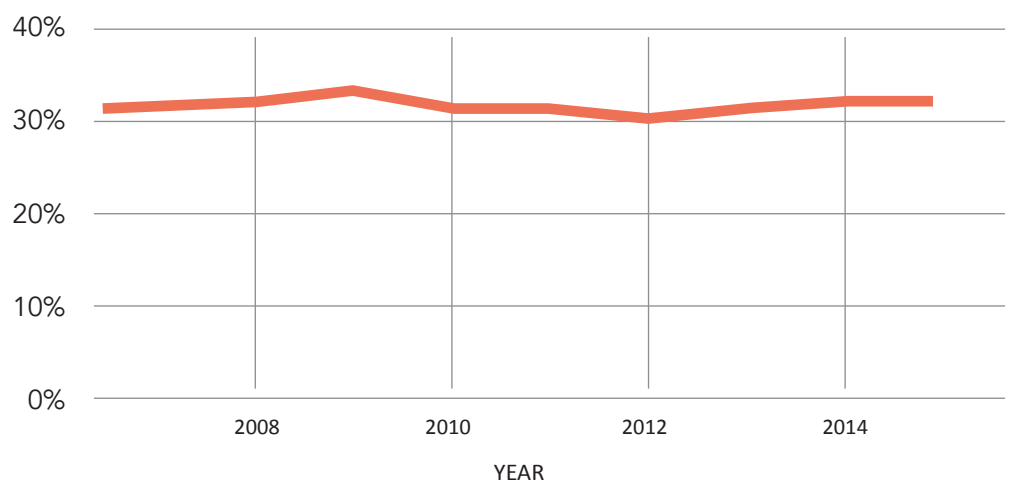
‘Procurement’ describes the purchase of goods, works or services from the private sector, charities or other organisations by the government.¹⁹ Public

sector procurement teams set the parameters of the service, goods or works provided and if the decision is made to outsource, the contract is advertised and bids are invited from providers beyond (and including) the public sector. What is procured by the public sector varies considerably, from the purchase of small items such as stationery to the delivery of on-the-ground public services.²⁰

The public sector aims to achieve value-for-money through procurement: “the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought.”²¹ Recent governments have tended to look favourably upon the use of procurement in public services, viewing it as an important way to achieve value-for-money in public service delivery and to drive up the quality of service provision through competitive market forces.²²

FIGURE 1.
GOVERNMENT
PROCUREMENT
SPEND AS A
PERCENTAGE
OF OVERALL
GOVERNMENT
SPENDING

Source: OECD²³



19. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018

20. House of Commons Work and Pensions Select Committee, Welfare-to-work, 2015

21. HM Treasury, Managing Public Money, 2018

22. Josh Pritchard and Rose Lasko-Skinner, Please Procure Responsibly: the state of public service commissioning, Reform, 2019

23. OECDStat, Government at a Glance - 2017 edition: Public procurement, Webpage, 2019

WHAT IS THE PUBLIC SECTOR SPENDING AND BUYING?

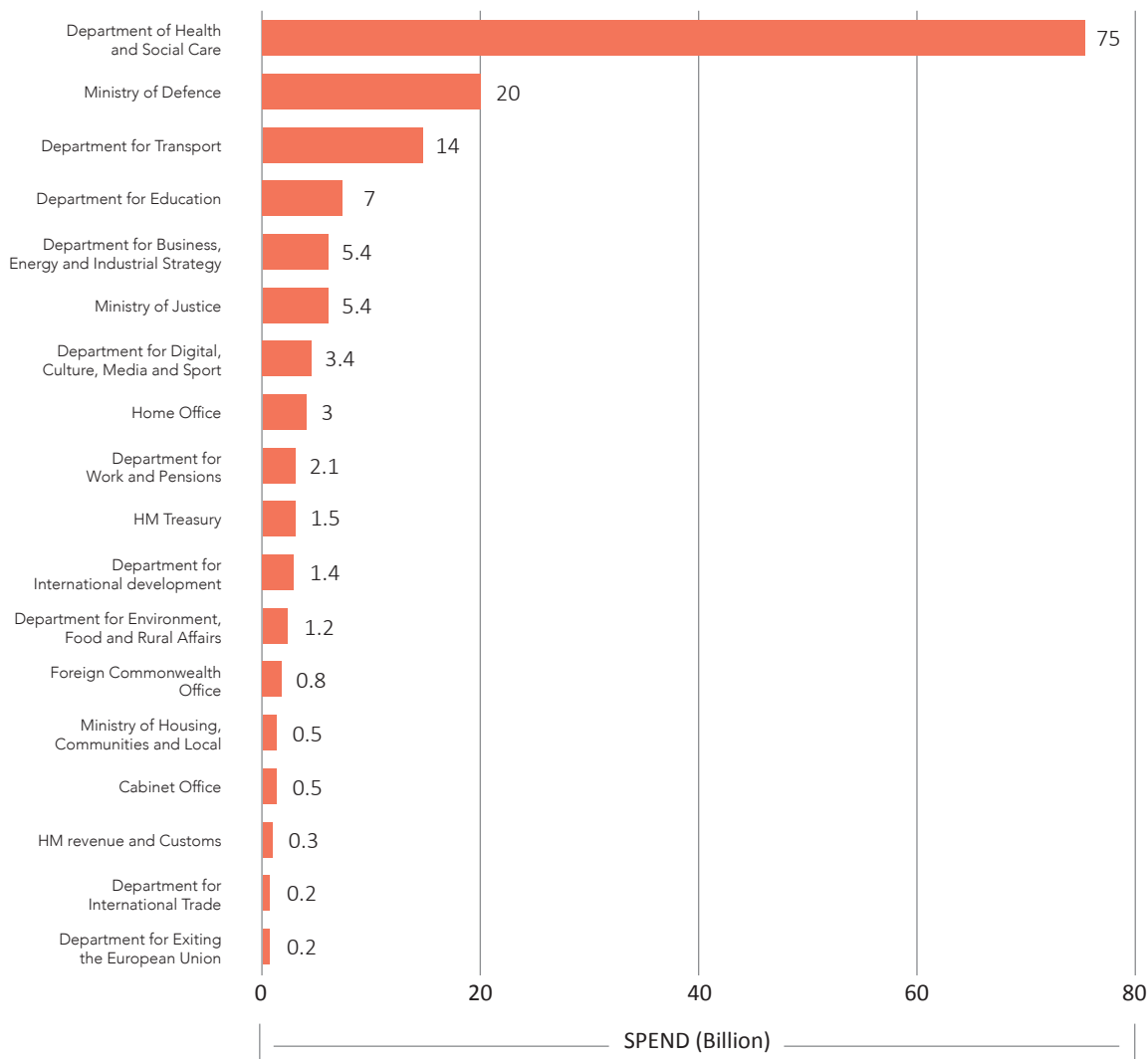
As shown by the chart on the previous page, spending on procurement has stayed relatively stable over the past ten years, at approximately a third of overall public spending. This is the government's single greatest expenditure: £284 billion was spent on procurement in 2017.²⁴ This compares to £264 billion of spending on grants, including benefit payments - the government's second biggest expenditure.²⁵

Four central government departments account for 82% of procurement spending: the Department of Health and Social Care, the Ministry of Defence, the Department of Transport and the Department for Education.²⁶ As shown in Figure 2, the Department of Health and Social Care spends around £75bn annually on procurement, approximately half of its total expenditure.²⁷

Figure 3 shows the shape of procurement spend across central and local government. The highest procurement spend across both is on 'works', which includes construction, repair, and maintenance. Local government accounts for all spending on social and community care, with 14% (£7 billion) of total government procurement expenditure. Central government comparatively spends more on education, facilities and management services, ICT, and consultancy.²⁹

FIGURE 2.
GOVERNMENT PROCUREMENT SPEND BY CENTRAL GOVERNMENT DEPARTMENT

Source: HM Treasury²⁸



24. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018

25. Ibid

26. Ibid, p.10

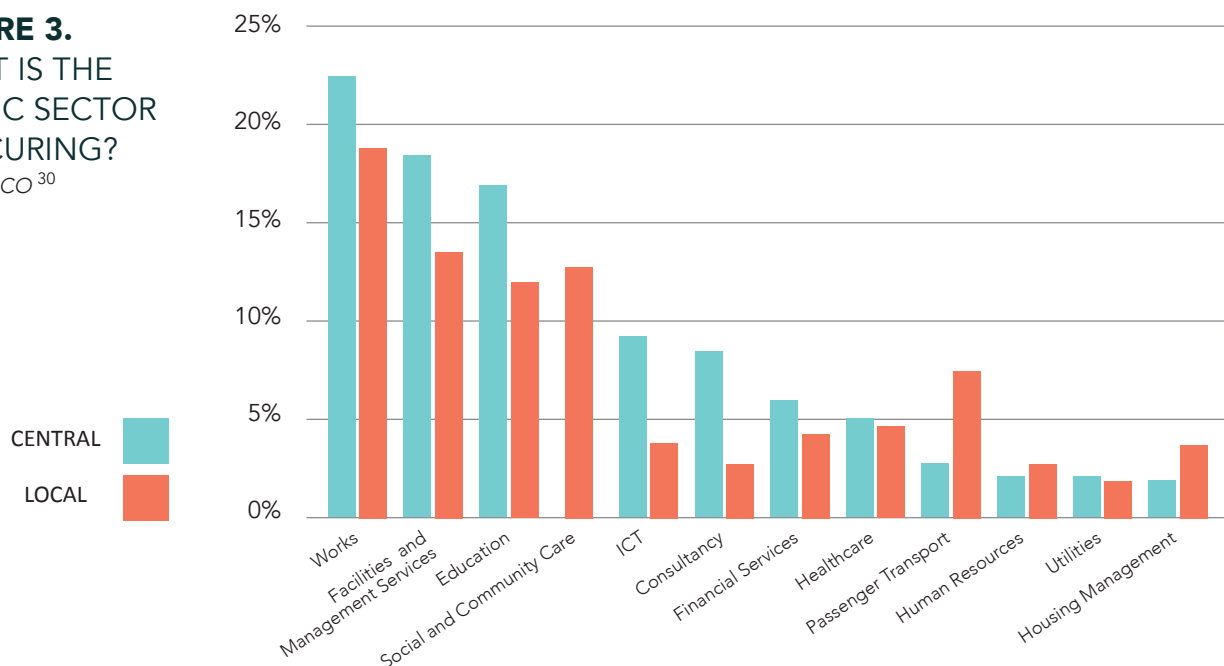
27. Ibid, p.9

28. HM Treasury, Public Expenditure Statistical Analyses 2018, p.44-45

29. Spend Network, Assessing the transparency gap in public procurement: a report for the Information Commissioner, 2019

FIGURE 3.
WHAT IS THE
PUBLIC SECTOR
PROCURING?

Source: ICO³⁰



HOW COMPETITIVE ARE UK PUBLIC SECTOR MARKETS?

The size and level of competition in UK public sector markets varies significantly. This is due to a range of factors, from policy design to the nature of the service. Adult social care, for example, is a well-developed market with a relatively large volume of small suppliers,³¹ whilst the criminal justice market is a relatively young market, dominated by a few large suppliers who may build or manage prisons.³²

However, most markets do not have the diversity of suppliers that might be desired. Research by the Financial Times and Open Opps found the number of single bidders for UK tenders increased from 15% in 2016 to 23% in 2018, demonstrating there is no competition for more than one in five tenders in the UK.³³ Additionally, in comparison to the rest of the EU, the UK has one of the lowest levels of small to medium enterprise (SME) participation in public procurement; just 22% of UK SMEs participate in public procurement procedures in comparison to an EU average of 32%.³⁴

The 2010-2015 coalition government introduced a target for 25% of central government procurement spend to be awarded to SMEs. This target was met

in 2015 and since then a new target has been set for one third of all central government contracts to be awarded to SMEs by 2022.³⁵

To meet these targets the government has made a number of changes to procurement policy. Government departments have been prohibited from excluding potential bidders on the basis of low turnover; larger contracts are increasingly broken up into smaller lots, as these are more manageable for SMEs to bid for; bidding procedures have been simplified; and communication between SMEs and the government has been improved.³⁶

Concerns, however, have been raised that the government does not appear likely to meet this second more ambitious target for SMEs.³⁷ Despite initial progress, the percentage of government spending going to SMEs has started to reduce in recent years, as shown in Figure 4. In contrast, according to the Institute for Government's estimates, the proportion of procurement spend on 'strategic suppliers' – companies receiving more than £100m annual revenue from government contracts – has increased significantly over the past few years, with the public sector market share for the 25 strategic suppliers increasing from 13% in 2012/13 to 18% in 2016/17.³⁸

30. Spend Network, Assessing the transparency gap in public procurement, 2019

31. Trades Union Congress and the New Economics Foundation, Outsourcing Public Services, 2015, p.70

32. Trades Union Congress and the New Economics Foundation, Outsourcing Public Services, 2015, p.8

33. Gill Plimmer and Max Harlow, Sole outsource bidders win more public sector contracts, The Financial Times, 2019

34. European Commission, 2018 SBA Fact Sheet – United Kingdom, 2018, p.10

35. Cabinet Office, Central government spend with SMEs, 2019; Crown Commercial Service, Public Procurement Policy Note, 2018

36. Lorona Booth, Briefing Paper: Public procurement and contracts, House of Commons Library, 2018

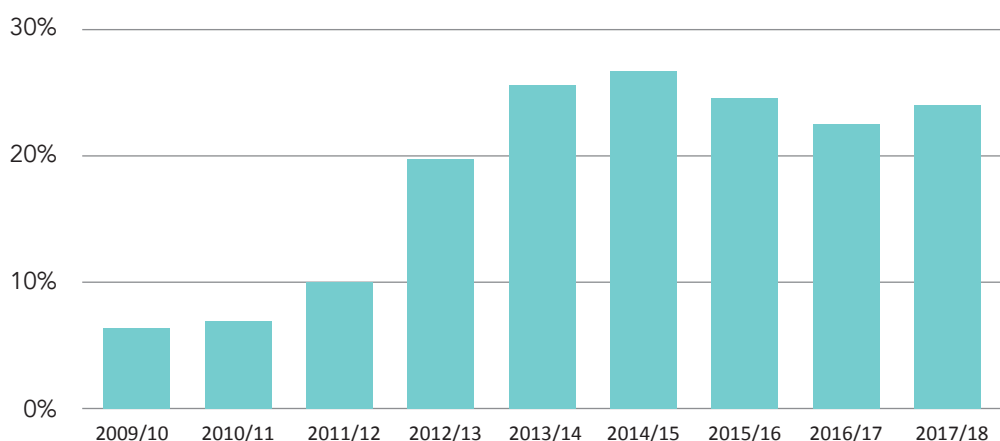
37. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018, p.21 (see pages 52-58 for methodology)

This has led to concerns that public sector procurement continues to be overly reliant on a small number of large suppliers.³⁹ Such claims were seemingly substantiated in 2018 by the high-profile collapse of Carillion, a construction company responsible for over 400 public sector contracts at the time. The company continued to receive public money despite signs of financial trouble and frequent mismanagement of projects.⁴⁰ These worries were further cemented by another high-profile supplier, Interserve, falling into administration.⁴¹

A number of explanations have been provided for the tightening grip of large suppliers on public contracts. These include larger companies aggressively bidding for contracts at lower prices,⁴³ as well as these firms having the capacity to take on a lengthy bidding process with no certainty of success.⁴⁴ It is unsurprising that a Confederation of British Industry (CBI) survey found just 10% of SMEs felt the overall ease of procurement processes had improved since 2015, and only around a quarter of all businesses believed government contracts had become more accessible to SMEs.⁴⁵

FIGURE 4.
PERCENTAGE
OF CENTRAL
GOVERNMENT
PROCUREMENT
SPENDING WITH
SMES

Source: HM Government⁴²



HOW IS PUBLIC PROCUREMENT REGULATED?

EU treaties and directives and international agreements

EU treaties and directives provide the basis for the rules governing public procurement in the UK. The Treaty on the Functioning of the European Union set out to establish a single market within the EU founded upon a set of principles, including free movement of goods and the freedom to provide services.⁴⁶ These principles apply to almost all public procurement requiring. For example, it is required that procurement opportunities over a certain price threshold are advertised and open to suppliers outside the UK.⁴⁷ This operates alongside the World Trade Organisation (WTO) Agreement on Government Procurement (GPA), a voluntary agreement between the EU and 18 other countries that allows for access to each participants' public procurement markets.⁴⁸

EU public procurement directives regulate the organisation and publication of tender procedures. In summary, these aim to ensure the Treaty principles are embedded in procurement processes, regulating the advertising of procurement opportunities, the assessment of suppliers, and the criteria on which contracts awards should be based.⁴⁹ The UK does particularly well from delivering public sector contracts to European countries;⁵⁰ the European procurement market is worth around 5% of UK GDP.⁵¹

Of note, EU Directive 2014/24/EU requires that procurement decisions are made "using a cost effectiveness approach . . . which shall be assessed on the basis of criteria, including qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question."⁵² A number of defined grounds for excluding contractors are established. For example, Article 58 states that "all requirements shall be related and proportionate to the subject-matter of the

38. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018, p.16

39. Public Accounts Committee, Strategic Suppliers, House of Commons Library, 2019

40. The National Audit Office, Investigation into the government's handling of the collapse of Carillion, 2018, p.4; House of Commons Public Administration and Constitutional Affairs Committee, After Carillion: Public Sector Outsourcing and Contracting, Seventh Report of Session 2017-19, 2018

41. Julia Bradshaw, Interserve collapses into administration after investors reject rescue deal, The Telegraph, 2019

42. Lorona Booth, Briefing Paper: Public procurement and contracts, House of Commons Library, 2018, p.17; Cabinet Office and Crown Commercial Services, Central government direct and indirect spend with small and medium sized enterprises 2017/18, 2019

43. Gary Sturgess, Just Another Paperclip? Rethinking the Market for Complex Public Services, Business Services Association, 2017

44. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018, p.16

45. Confederation of British Industry, Partnering for Prosperity: CBI/Browne Jacobson 2018 Procurement Survey, 2018

46. Lorona Booth, Briefing Paper: Public procurement and contracts, House of Commons Library, 2018

47. Ibid

48. World Trade Organisation, Agreement on Government Procurement, 2019

contract.”⁵³

With specific reference to tax, the European Commission has written: “Member States are not precluded from adopting substantive public procurement provisions which aim to ensure the observance of the principle of equal treatment and transparency, provided that they respect the principle of proportionality.”⁵⁴ The EC adds that aspirant contractors must be given the opportunity to show that their arrangements are not in practice “jeopardising transparency and distorting competition.”⁵⁵

Aggressive use of tax havens could distort competition by conferring an unfair advantage upon businesses that use them, and in turn disadvantage private actors who do not do so. Furthermore, the use of tax secrecy jurisdictions to disguise beneficial ownership arguably harms transparency, and makes it more difficult to consistently identify conflicts of interest.

The EC cites a ruling from the European Court of Justice in support of their assessment: “Community law does not preclude the adoption of national measures designed to avoid, in procedures for the award of public works contracts, the risk of occurrence of practices capable of jeopardising transparency and distorting competition [...] and thus to prevent or punish fraud and corruption.”⁵⁶

The EU also provides guidance for procurement teams to choose contracts on the basis of the ‘Most Economically Advantageous Tender’ (MEAT). This guidance is regularly misunderstood by procurement teams due to its somewhat misleading name. In reality, the guidance encourages contracting authorities to consider factors beyond “economic considerations” that include quality, such as “aesthetic and functional characteristics, accessibility, social characteristics, environmental characteristics, innovative characteristics, after-sales service and technical assistance.”⁵⁷ Guidance such as this within the EU should encourage UK procurement teams to go further when evaluating bids, awarding contracts on the basis of things considered to be social value.

There are a number of UK-derived additional

requirements. The Small Business, Enterprise and Employment Act 2015 encourages contracting authorities to procure from SMEs.⁵⁸

Brexit and public procurement

EU Directives on procurement will continue to apply in the UK until the end of December 2020. After the UK leaves the EU, the substance of EU directives are likely to continue to apply, because procurement rules will almost certainly be a key part of any future UK-EU relationship. While it could be advantageous to reform UK law without EU directives, if the UK is to continue to have access to the EU’s procurement market, it will likely have to continue to accept the greater part of these rules.⁵⁹ Furthermore, the government is committed to ensuring it remains party to the GPA after Brexit.⁶⁰

The Public Services (Social Value) Act 2012

The Public Services (Social Value) Act 2012 requires public sector commissioners to consider the economic, environmental, and social benefits of their approaches to procurement before procurement begins. This requires an analysis of the additional value created in the delivery of a service contract that brings a wider community or public benefit.⁶¹ As described by Chris White, the MP behind the Social Value Act, this sense of value is much broader than a narrow financial value:

“We mean ‘value’ not in its narrow [financial] sense but in its true sense—recognising the importance of social, environmental and economic well-being across our communities and in our lives.”⁶²

The Cabinet Office has announced its intention to mandate contracting authorities to explicitly evaluate social value in bids for contracts, rather than just consider it pre-procurement.⁶³ It held a consultation for experts and suppliers to comment on a proposed evaluation model for contracting authorities to use to account for social value in future contracts.⁶⁴

The UK is not unique: momentum around social value has been growing across the EU and internationally.⁶⁵ The European Commission,

49. Lorona Booth, Briefing Paper: Public procurement and contracts, House of Commons Library, 2018

50. *Ibid*

51. The Confederation of British Industry, Markets for good, creating effective public-private partnerships post-Brexit, 2019, p.10

52. Article 67.2, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC Text with EEA relevance, online at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_094_R_0065_01 (accessed 13/06/2019)

53. *Ibid*

54. EC Legal Officer, DG for Internal Market, Industry, Entrepreneurship and SMEs, reply to DatLab, letter, 2018, online at https://drive.google.com/file/d/1SZSC__3B2leAO4wFXOnSTTFJqgcVwJ1a/view (accessed 13/06/2019)

55. *Ibid*

56. *Ibid*, Case C-213/07, *Michaniki*, §§ 60-62

57. The Confederation of British Industry, Markets for good, creating effective public-private partnerships post-Brexit, 2019, p.15

58. Lorona Booth, Briefing Paper: Public procurement and contracts, House of Commons Library, 2018

59. David Allen Green, Blue Passports and Public Procurement, *The Financial Times*, 2018

60. Stefano Fella, Briefing Paper: UK replacement of the EU’s external agreements after Brexit, House of Commons Library, 2019, p.8

61. Compact Voices, *Understanding Social Value: A guide for local Compacts and the voluntary sector*, 2014; NCVO, *Social Value in Commissioning and Procurement*, 2017

for example, has created guidance for member states to 'buy socially'. This includes purchasing services from providers to create job opportunities, decent work, social and professional inclusion and better conditions for disabled and disadvantaged people.⁶⁶

The move towards including social value in procurement is connected to a wider international movement to improve social outcomes from spending. In 2013 the G8's Social Impact Investment Taskforce was established, placing additional focus on social impact as a more holistic approach to investment.⁶⁷ This is mirrored by an increasing focus on social impact by the European Commission.⁶⁸

The Civil Society Strategy

In 2018, the Department for Digital, Culture, Media and Sport (DCMS) launched its Civil Society Strategy, laying out the government's plans for supporting civil society and the importance of government working closely with civil society organisations, private companies and local communities.⁶⁹ It aims to provide public and private sector organisations with a clearer understanding of what social value is and how to effectively measure it. The government intends to work with external partners to design a tool which measures social value and can be used by commissioners, in addition to public and private sector organisations as a framework during the procurement process. The strategy also introduces the requirement for government departments to 'account for' social value in new procurement rounds, rather than just 'consider' it.⁷⁰

The government's commitment to social value was reiterated at its Social Value Summit in March 2019.⁷¹ Key concerns included modern slavery, the employment of people with disabilities and environmental issues, with the government supply chain identified as a key potential driver of positive change through the use of social value led procurement. David Lidington MP, Minister for the Cabinet Office at the time, stated ahead of the summit:

"By making sure that these social values are reflected not just across the government, but

*through all the companies we work with, we will take a major step towards our goal of creating an economy that works for everyone."*⁷²

The Outsourcing Playbook

In 2018, the Cabinet Office held a review collaborating with key government departments, suppliers and stakeholders to find out how the procurement processes could be made more effective, culminating in the publication of the Outsourcing Playbook in February 2019. The Playbook announced 12 new policies for central government departments aimed at improving procurement, including the initial decision on whether to purchase from external providers in the first place, known as 'make or buy'; how to share and manage risk with suppliers; and promoting a better relationship between contracting authorities and suppliers through pre-market engagement.⁷³

Cross-government institutions

The increasing role of cross-government organisations such as the Crown Commercial Service (CCS) and Government Commercial Function (GCF) have been central to the government's strategy to improve the quality of service delivery across government and achieve better value for money.⁷⁴

The CCS was established in April 2014 to replace the Government Procurement Service. It platforms the purchase of £13.4bn worth of government spending on common goods and services, such as stationary and IT services. It aims to improve value for money and streamline the management of the government's commercial contracts for common goods and services.⁷⁵

Despite this, the initial performance of the CCS was poor and it failed to meet its initial targets.⁷⁶ This was driven, in part, by government departments not trusting the CCS.⁷⁷ However, following a government review in 2016, performance and trust in the CCS has improved and its presence across government has continued to grow.⁷⁸

Dynamic Purchasing Systems (DPS) also exist at a local level to help contracting authorities purchase services electronically from a pool of pre-qualified

62. NCVO, Social Value in Commissioning and Procurement, 2017

63. Cabinet Office, Chancellor of the Duchy of Lancaster speech to Reform, 2018

64. Cabinet Office, Open Consultation: Social value in government procurement, 2019

65. Professor Richard Tomlins Cohesia, Social Value: Current public and private thinking on Social Value commissioning, 2015

66. European Commission, Social procurement, Updated guidance and awareness-raising to make socially-responsible purchases, 2019

67. Professor Richard Tomlins Cohesia, Social Value: Current public and private thinking on Social Value commissioning, 2015

68. Ibid

69. HM Government, 'Civil Society Strategy: Building a Future That Works for Everyone', 2018

70. Ibid

71. Cabinet Office, Businesses urged to do more to help improve society, Press Release, 2019

72. Ibid

73. Government Commercial Function, The Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions and Contracting, 2019

74. Crown Commercial Service, About Us, Gov.uk, 2019

suppliers. The North East Procurement Organisation (NEPO), for example, works on a similar model to the CCS. The service provides an e-portal for public authorities, such as local government and local NHS organisations to purchase goods and services faster and cheaper, saving them time and resources. The project also strives to purchase goods and services in a way that promotes the local economy, with 60% of spend on North East Suppliers, 65% of which is spent on SMEs.⁷⁹

The GCF is a network of 4000 government staff established in 2015 with the aim of improving commercial outcomes for individuals and services.⁸⁰ It aims to save taxpayers' money by investing in the skills of current staff through training and

networking opportunities.⁸¹ It offers a professional accreditation for senior commercial staff which is recognised across government.⁸²

A core function of the GCF is building resilience into the procurement system. When Carillion began experiencing financial difficulties, the GCF put into action plans it had made for such a scenario.⁸³ As the Government Chief Commercial Officer Gareth Rhys Williams describes: "This was not the outcome we wanted, but by planning for it we achieved our first priority of avoiding damage to the delivery of vital public services."⁸⁴

75. House of Commons Committee of Public Accounts, *The Crown Commercial Service, Forty-eighth Report of Session 2016–17*, 2017

76. *Ibid*

77. *Ibid*

78. *The Crown Commercial Service, About Us*, 2019

79. *Nepo.org, about*, 2019

80. *Government Commercial Function, Creating One Commercial Community, Booklet*, 2018

81. *Government Commercial Function, Creating One Commercial Community, Booklet*, 2018

82. *Ibid*

83. Gareth Rhys Williams, *Putting a function to the test*, *Civil Service Quarterly*, 2018

84. *Ibid*

CHAPTER 2 THE PRINCIPLES OF GOOD PROCUREMENT

The previous chapter set out the procurement policy landscape in the UK today. This chapter describes the principles that we believe should guide public procurement. In summary, we think three principles should underpin a modern, forward-looking approach to procurement:

- Maintaining and deepening social value provision, including using this framework to address corporate tax avoidance and other economic priorities.
- Transparency in public procurement.
- Fair competition and boosting smaller suppliers market share.

These are guided by our belief that procurement can be about much more than the purchase of goods or the commissioning of services. Done right and in accordance with the principles set out in this chapter, public procurement could help build a fairer, more prosperous economy.

MAINTAINING AND DEEPENING SOCIAL VALUE

We feel strongly that maintaining existing social value provisions in the UK's public procurement framework should be a priority for any future policy change in the system. But what is the value in social value?

'Genuine' value for money

The primary appeal of social value is that it considers the additional value created in the delivery of a contract beyond the primary contract activity.⁸⁵ This can take a wide variety of forms, from the wages paid to those involved in the contract's delivery to the associated carbon

footprint. Currently there is no official definition of social value beyond that in the Public Services (Social Value) Act 2012: economic, environmental and social well-being. Contracting authorities then interpret these criteria for each procurement round. Various metrics and toolkits have been created by independent organisations to measure social value.⁸⁶

A social value approach to procurement can allow public services to continue to deliver increased value for the public without requiring additional spending (or further taxation for new services). It represents a holistic approach to procurement, recognising that commissioning does not take place in a vacuum and decisions will, and should, have wider societal impacts.

This approach can also be a more accurate reflection of what we value as individuals and societies. We place enormous value on things that are often neglected by economics: living and working in diverse communities, the air we breathe, the quality of local services. Social value provisions that look beyond financial benefits are an appropriate recognition of this.

Encouraging the market to fulfil wider public sector aims

The move towards including social value in the act of purchasing services, works and goods, is an opportunity for departments and local authorities to marry specific public sector goals with corporate behaviour. We believe this can be effective in delivering policy objectives beyond the public sector. For example, Croydon Council are using social value to encourage suppliers to adopt local priorities around training and skills.⁸⁷

85. NCVO, Social Value in Commissioning and Procurement, (Website), 2019

86. For more see: Social Value Portal, National TOMS Framework, online at <https://socialvalueportal.com/national-toms/> accessed 20/06/2019); Josh Pritchard and Rose Lasko-Skinner, Please Procure Responsibly: the state of public service commissioning, Reform, 2019, p.20-25

87. Josh Pritchard and Rose Lasko-Skinner, Please Procure Responsibly: the state of public service commissioning, Reform, 2019, p.20-25

This has spurred positive behaviour by suppliers, for example construction company Willmott Dixon have begun to offer on-site training to open up opportunities for the local workforce.⁸⁸

Opens the door to alternative economic approaches

Whilst awareness and uptake of social value amongst commissioners is mixed,⁸⁹ a number of creatively-minded policy makers have been utilising the social value provisions of the Public Services (Social Value) Act to carve a path towards an alternative economic model.⁹⁰

In particular, a number of pioneering councils across the UK are using the Act's powers to pursue a new approach to local economic development, often referred to as 'community wealth building'.⁹¹

This approach seeks to retain public and private spending within a local economy, ensuring wealth remains in the area. An important part of 'community wealth building' is localist procurement through which councils and other public sector authorities look, where possible, to 'buy local'. This approach to procurement has often been utilised by local authorities as a response to austerity and Preston City Council is perhaps the best-known example of this approach to local economic development.⁹²

These new approaches excite Demos on two fronts. First, they represent genuine policy experiments, building the evidence base for 'what works' in local economic development. Second, they represent a structural answer to the UK's stark regional inequalities, instead of relying upon redistribution.

CASE STUDY SOCIAL VALUE: AN INTERNATIONAL VIEW

The Dutch Ministry of Infrastructure and Water (Rijkswaterstaat) has employed new, innovative ways to encourage companies to be more sustainable.

When bidding for government contracts, companies must meet certain standards of sustainability. Rijkswaterstaat use a carbon dioxide performance ladder that works as a certification system, providing companies with a way to measure and publish data on their carbon dioxide performance. Organisations are awarded a level from one to five based on how sustainable their organisation is. A certificate on the ladder can act as an award advantage when applying for tender; the higher a company is on the ladder, the greater the award value.

Since their introduction over 800 certificates have been awarded, with over 60% to SMEs.

These changes have helped to transform the Dutch infrastructure sector: now nearly all organisations have carbon dioxide reduction targets and an awareness of their carbon footprint. A study from Utrecht University found companies with a certificate reduced their carbon dioxide at a faster rate of 3.2% per year, in comparison to 1.6%.⁹³



88. Richard Pickett, Building Lives Less Ordinary, Willmott Dixon, 2019

89. Social Enterprise UK, Procuring for Good: How the Social Value Act is being used by local authorities, 2016

90. Cabinet Office, Social Value Act Review, 2015

91. Alan Lockey and Ben Glover, The Wealth Within, Demos, 2019

92. Peter Goodman, Austerity Has Ravaged U.K. Communities. It Has Also Spurred Reinvention. The New York Times, 2019

93. Case study drawn from: Skao, Facts and Figures, Webpage 2019, online at: https://www.skao.nl/fact-figures_en (accessed 20/08/2019).

Fortunately, considerations such as a contract social value are increasingly being taken seriously by procurement teams in the UK. Just 12% of contracts were awarded on the basis of cost alone in 2017, a significantly lower figure than a number of other EU countries.⁹⁴ However, barriers remain to further deepening social value in procurement, which will be addressed in the next chapter.

Corporate tax avoidance and social value

Tax avoidance has become an issue of significant public concern in recent years.

Unlike tax evasion, tax avoidance complies with the law, though aggressive or abusive tax avoidance often seeks to subvert the spirit of the law.⁹⁵ The European Commission estimate that between €50-70 billion is lost each year to tax fraud, evasion and avoidance in the EU.⁹⁶

Public outrage has been directed at the actions of a number of multinational firms that seek to minimise their UK tax exposure through complex international arrangements. This often involves parent companies of subsidiaries being located in so-called 'tax havens' - jurisdictions with extremely low tax rates or without an adequate amount of tax transparency. To discourage countries from being non-compliant with international tax legislation and regulations, in 2017 the European Commission created a grey and black list to indicate which countries are non-compliant.⁹⁷ Countries are evaluated on whether they are transparent about their tax rates, have fair tax rates (that are not harmful for global tax competition) and whether they have implemented the anti-BEPS (Base Erosion Profit Shifting) measures, an action plan to prevent corporate tax avoidance agreed by all OECD and G20 members.⁹⁸

In light of such trends, it has been argued that the government should do more to ensure corporations

that benefit from public sector contracts pay an appropriate level of tax. The Fair Tax Mark, for example, has pushed for an accreditation scheme for firms which fully meet their tax obligations.⁹⁹ Much like the Dutch Ministry of Infrastructure and Water's carbon dioxide Performance Ladder discussed above, the organisation argues that a company's Fair Tax Mark accreditation should be a consideration when evaluating bids for tender.¹⁰⁰

Professor Bob Hudson, a health and social care specialist at the University of Kent, has argued that companies contracted to provide a public service should prove they pay their taxes in the UK via a taxation test, as part of a reformed "ethical commissioning" agenda.¹⁰¹ Hudson argues a number of key providers in the health and social care sector have corporate structures that enable them to avoid paying taxes in the UK and therefore may not contribute to replenishing the public purse, despite being part or fully funded by it.

Tax Watch UK found that Microsoft paid tax at an effective average rate of just 3.6% in the UK in the six years through 2017,¹⁰² despite being awarded £129 million of government contracts between 2011 and 2017.¹⁰² Research by the trade union GMB found that HM Revenue and Customs alone "spent £11m to use Amazon's web-hosting service last year, more than six times the £1.7m it received in corporation tax from Amazon's main UK business".¹⁰⁴

In research for this report, Demos found that 25 of the government's 34 Strategic Suppliers (73.5%) were part of a corporate group including one or more subsidiaries in 14 'tax havens' not including US mainland, EU or Single Market jurisdictions, according to public records.¹⁰⁵ Seventeen of those (50%) were part of a corporate group with subsidiaries in British Overseas Territories or Crown Dependencies, such as the British Virgin Islands and Guernsey.

94. European Commission, The Single Market Scoreboard: Public Procurement, 2017, online at http://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm (accessed 20/08/2019)

95. House of Commons Library, Tax avoidance and tax evasion, 2019

96. The European Commission, A Fair Share: Taxation in the EU for the 21st Century, 2018

97. The European Commission, Fair Taxation: EU updates list of non-cooperative tax jurisdictions, Press Release, 2019

98. OECD, OECD/G20 Inclusive Framework on BEPS, 2018

99. Paul Monaghan, How can we ensure that tax evaders and aggressive tax avoiders do not profit from taxpayer-funded public procurement contracts?, Fair Tax Mark, February 2018

100. Fairtax.net, Webpage, 2019

101. Bob Hudson, 'How "Ethical Commissioning" Could Curb the Worst Effects of Outsourcing', British Politics and Policy at LSE, 2018; Bob Hudson,

A new, ethical approach to outsourcing social care, Committee on Standards in Public Life, Gov.uk, 2018

102. Corporate tax and technology companies, TaxWatch, 2018 available online at <http://www.taxwatchuk.org/corporate-tax-and-tech-companies-in-the-uk-2/> (accessed 10/06/2019)

103. Calculated by Demos from figures kindly supplied by Spend Network, see Appendix for more detail

104. Sarah Butler, HMRC outlay on Amazon over six times what firm paid in corporation tax – GMB, 2019

105. 9 overseas jurisdictions used by at least one of the companies were identified which appeared on the Tax Justice Network's Corporate Tax Haven Index 2019, online at <https://corporatetaxhavenindex.org/introduction/cthi-2019-results> (accessed 10/06/2019). Of those, 14 were non-US mainland, -EU or -Single Market jurisdictions, including six British Overseas Territories and Crown Dependencies. Ten of the 14 (including the six UK-linked territories) were among the 13 jurisdictions with the highest "haven score" calculated by the Index. Each of the 19, plus Puerto Rico, St Kitts and Nevis, Barbados and the US Virgin Islands (also amongst jurisdictions used by Strategic Suppliers), were also on the Financial Secrecy Index 2018, online at <https://www.financialsecrecyindex.com/introduction/fsi-2018-results> (accessed 10/06/2019), also compiled by TJN, with "secrecy scores" concentrated in the top half of the sample, with the lowest-scoring non-EU jurisdiction being Jersey. The conclusions reported above do not change whether the list of 19 or the list of 23 is used, because every group which uses one of the additional four also uses one of the other non-US/EU/SM tax havens. See Appendix for more detail on our method.

106. Calculated by Demos from figures kindly supplied by Spend Network

Figures for 20 of the 25 tax-haven-linked Strategic Suppliers show that they were awarded more than £41 billion of government contracts between 2011 and 2017.¹⁰⁶

Of the 34 strategic suppliers, 19 were part of a corporate group including one or more subsidiaries in jurisdictions included on the EU's 'blacklist' or 'greylist'. Of the 19, 14 of those use jurisdictions that appear on the blacklist, and five additional companies use jurisdictions that appear on the greylist alone.¹⁰⁷

Figures for 17 of the 19 show that they were awarded more than £27 billion worth of contracts between 2011 and 2017.

It is important to note that having operations in overseas jurisdictions that we have defined (using the Tax Justice Network's Corporate Tax Haven Index 2019) as a 'tax haven' does not mean said strategic supplier is avoiding paying taxes - there are various (credible) reasons for having operations in said countries. It can nonetheless be considered an indicator.

Public procurement clearly represents one route to driving better corporate tax behaviour. We therefore believe that the social value provisions in the UK's current public procurement framework should be amended so that consideration of a firm's contribution to the exchequer, and its potential use of a country's anti-competitive tax rates, are legitimate criteria for commissioning authorities to consider when awarding contracts. This should come in addition to other government initiatives such as the Digital Tax Consultation that hopes to tackle some of the challenges posed by international corporate structures and intangible digital assets.¹⁰⁸ In the next chapter we set out the changes to procurement policy required to allow this to happen.

TRANSPARENCY IN PUBLIC PROCUREMENT

It is useful to set out why transparency is so important in public procurement.

First, a lack of transparency can undermine faith in public procurement. If the public are not able to see how their money is being spent, trust in the use of external suppliers can be undermined. We know that the public cares about transparency

in procurement; a survey conducted by the Information Commissioner's Office found that 48% of people said it was very important that companies acting on behalf of public authorities should be subject to the Freedom of Information Act.¹⁰⁹

This is particularly important when public faith in the use of external providers in public services has decreased significantly in recent years. In a survey commissioned by the CBI, the proportion of the public agreeing with the statement 'if a private sector company can provide public services more effectively than central government or local councils it should be allowed to do so' has fallen from two thirds in 2001 to half in 2014.¹¹⁰ Furthermore, the in-sourcing of probation contracts¹¹¹ and Labour's recent commitment to renationalise the National Grid¹¹² demonstrate a decided shift away from the involvement of private companies in the delivery of public services.

Moreover, if government departments, Parliament and the public have more information about a supplier's costs, performance and profits, these bodies may be better able to hold contracting authorities and suppliers to account.¹¹³ A lack of wider transparency could in part explain why, for example, Carillion continued to receive public funds up to the point of going into financial administration. As the Public Accounts Committee has set out:

"Too often the government has used commercial confidentiality as an excuse to withhold information, often in response to Freedom of Information requests from the public or MPs".¹¹⁴

Greater transparency in public procurement can deliver better value for money and improve service delivery across the board. As Professor Richard Mulgan argues in a paper for the Office of the Information Commissioner in Queensland, Australia:

"If the assessment process is more open, in both the matters covered and the range of people involved, evidence suggests that increases in transparency leading to improved communication can have a beneficial effect on the quality of performance."¹¹⁵

Transparency in procurement can encourage contracting relationships to become "more like collaborative relationships, where different parties

107. The European Commission, Evolution of the EU list of tax havens, 2019, online at https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_list_update_12_03_2019_en.pdf; The European Commission, Fair Taxation: EU updates list of non-cooperative tax jurisdictions, Press Release, 2019 online at https://europa.eu/rapid/press-release_IP-19-1606_en.htm (accessed 23/08/2019)

108. HM Treasury and HM Revenue and Customs, Digital Services Tax: Consultation, 2018

109. Information Commissioner's Office, Transparency in outsourcing: a roadmap, 2015, p.3

110. Confederation of British Industry, Our future public services: a challenge for us all, 2014

111. BBC, Probation service: Offender supervision to be renationalised, 2019

112. Angela Monaghan, Labour to end energy consumer 'rip-off' and renationalise network, The Guardian, 2019

113. House of Commons Public Accounts Committee, Contracting out public services to the private sector, Forty-seventh Report of Session 2013-14, 2014

114. Ibid

115. Richard Mulgan, Transparency and the Performance of Outsourced Government Services, Office of the Information Commissioner, Queensland, 2015

116. John Alford and Janine O'Flynn, Rethinking Public Service Delivery: Managing with External Providers, Palgrave Macmillan, 2011

117. Gavin Hayman, How your money gets spent (and what you should do about it): this week's other big news from the UK, Open Contracting Partnership, 2018

and stakeholders collaborate on the basis of trust and reciprocal exchange, while still retaining the emphasis on delivering public value”, leading to better service delivery focused on outcomes.¹¹⁶

Furthermore, increasing transparency could make marketplaces more competitive by making access to information more available. For example, a study found a link between the amount of information made publicly available and the number of single-bidders in EU procurement.¹¹⁷

However, procurement remains relatively opaque in the UK. The EU Single Market Scoreboard measures EU countries across 12 aspects of good public procurement, in which transparency is a key theme. Whilst achieving a “satisfactory” rating overall, the UK is rated unsatisfactory in four of the 12 key aspects of concern, such as overall poor data on calls for bids, buyer numbers and registration numbers.¹¹⁸ Spend Network argue that “hundreds of billions of pounds are spent every year across government on public services, yet there is no attendant right of public access to information about them”,¹¹⁹ concerns which are also shared by the Institute for Government.¹²⁰

Recent changes to commissioning approaches may be negatively affecting transparency and accountability. Commissioned public services are increasingly delivered through supply chains of multiple actors from a variety of sectors, instead of individual contractors.¹²¹ Because some information about the design of these supply chains is held by private contractors, there can be “opacity about where information is held”.¹²²

Similarly, recent changes to local government may be negatively affecting transparency. Local authorities are increasingly partnering with the private sector to deliver services, and some councils are delivering public services through trading companies; “in both cases, the transparency of the public pound is diminished.”¹²³ Additionally, changes to the NHS may also have increased the transparency gap. Clinical Commissioning

Groups (CCGs), for example, are exempt from NHS transparency requirements.¹²⁴

The Public Contracts Regulations Act 2015 introduced the requirement for public sector tenders to be published on the Cabinet Office’s ‘Contracts Finder’, an online portal, created for the publication of invitations to tender, with the aim of increasing competition, transparency, and accountability in public procurement.¹²⁵ The online portal is available through open access on the Cabinet Office’s website and includes relevant information such as the contract’s value.¹²⁶ Contracting authorities are legally obliged to publish this information on Contracts Finder; unless it is below a certain value, £10,000 for central government and £25,000 for local government and NHS organisations.¹²⁷ In theory, this platform should provide data on the number of government contracts and the number of vendors that bid for them. However, only 39% of tenders were published on Contracts Finder in 2018 - demonstrating a significant gap between legal requirements and practice.¹²⁸

The Outsourcing Playbook 2019 sort to remedy some of the barriers to transparent procurement, in particular around the evaluation of contracts’ performance.¹²⁹ The Playbook instructs that the three most relevant KPIs for outsourcing contracts, in line with the intended benefits of the contract, are made publicly available.¹³⁰ This is an excellent first step.

The most recent Open Government National Plan 2019-2021 aims to improve the Contracts Finder system, making a commitment to improve “the quality and quantity of data we publish [...] to show accountability and drive improvements in the way we deliver public services through third party contractors”.¹³¹ The focus of this will be improving the compliance, coverage and quality of contracts published on Contract Finder to enable contracts to be audited throughout the contract’s life, from initial tender and planning to final spend. In theory, anyone with internet access could be the auditor.¹³²

118. European Commission, Single Market Scoreboard, online at https://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm (accessed 20/08/2019)

119. Spend Network, Assessing the Transparency Gap: A report for the Information Commissioner, 2018

120. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018

121. Spend Network, Assessing the Transparency Gap: A report for the Information Commissioner, 2018, p.33

122. Ibid

123. Ibid

124. Ibid

125. Josh Pritchard and Rose Lasko-Skinner, Please Procure Responsibly: the state of public service commissioning, Reform, 2019, p.28

126. Contracts Finder, Webpage, online at <https://www.contractsfinder.service.gov.uk/Search> (accessed 20/08/2019)

127. Josh Pritchard and Rose Lasko-Skinner, Please Procure Responsibly: the state of public service commissioning, Reform, 2019, p.28; for more on other types of exemptions see: Crown Commercial Service, Procurement Policy Note – Promoting Greater Transparency, 2017

128. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018, p.26

129. Ibid, p.29

130. Ibid, p.29

131. The Department for Digital, Culture, Media and Sports, National Action Plan for Open Government 2019-2021, 2019

132. Ibid

However, we believe these commitments should go further, in order to bring about a more effective transformation for procurement in the UK. This will be addressed in the next chapter.

FAIR COMPETITION AND BOOSTING SMALLER SUPPLIERS MARKET SHARE

The government has taken steps to encourage fairer competition and to give SMEs a better chance of winning government contracts. Government departments have been prohibited from excluding potential bidders on the basis of low turnover; larger contracts are increasingly broken up into smaller lots that are easier for smaller suppliers to bid for; bidding procedures have been simplified; and communication between SMEs and the government has been improved.¹³³ The Cabinet Office also encourages prime contractors to use diverse supply chains as part of social value procurement.¹³⁴

However, concerns have been raised that the government appears unlikely to meet its new target for a third of all public procurement contracts to be awarded to SMEs.¹³⁵ The proportion of government contracts being awarded to SMEs is lower today than in 2014, highlighting an urgent need to reboot the SME agenda in public procurement. However,

before setting out steps to achieve this in the next chapter, it is useful to set out why it is so vital that SMEs are at the heart of public procurement.

First, removing the barriers that smaller suppliers face can increase the degree of effective competition in the provider market. This can allow the state to broaden its supplier base, securing “the positive effects of higher competition for public contracts as a counterbalance to dominant market players.”¹³⁶ This may mean lower prices and higher quality for the public sector.

When government is dependent on too few suppliers, the evidence suggests that we are more likely to see poor quality service provision and higher prices. An academic study found single bidder contracts are on average 7.1% more expensive than contracts with two or more bidders.¹³⁷ In 2011, a Public Administration and Constitutional Affairs Select Committee report found an oligopoly of IT service providers to Whitehall had been “ripping off” the government, with some departments paying as much as £3,500 for a desktop computer.¹³⁸

Second, SMEs could offer better value for money than bigger suppliers. They may have lower overheads and management costs than bigger firms, which could result in lower overall costs for commissioners. Smaller organisations may have only one point of contact, and therefore save communication time and resources for both government and suppliers.¹³⁹

Third, SMEs may also deliver a higher quality of service in comparison to bigger suppliers. Because they are likely to have shorter approval routes and fewer management tiers, SMEs can often respond quickly and efficiently to the changing requirements of a procurement authority.¹⁴⁰ SMEs may also be more ready to tailor their product or service to the individual demands of the commissioning authority than a larger firm.¹⁴¹ It has also been argued that because SMEs tend to be local by nature, they can more easily adapt to local circumstances and the requirements of local commissioners.¹⁴² This is the same for local charities and community businesses that might have developed a specialised expertise for a local issue.¹⁴³

133. Lorona Booth, Briefing Paper: Public procurement and contracts, House of Commons Library, 2018

134. Cabinet Office, Open Consultation: Social value in government procurement, 2019

135. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018, p.21

136. Sigma, Small and Medium-sized Enterprises (SMEs) in Public Procurement, 2016, p.2

137. Open Contracting Partnership, Greater transparency in calls for tenders could save Europe billions, Blog, 2019

138. House of Commons Public Accounts Committee, Government and IT — “a recipe for rip-offs”: time for a new approach, Twelfth Report of Session 2010–12, 2011, p.3

139. Small Business Service, Smaller supplier... better value?, Office of Government Commerce, 2005

140. Ibid, p.6

141. Fee, R., Erridge, A., & Hennigan, S, SMEs and Government Purchasing in Northern Ireland: Problems and Opportunities, European Business Review, 14(5): 326-334, 2002
Quoted in: Jani Saastamoinen, Helen Reijonen and Timo Tammi, The Role of Training in Dismantling Barriers to SME Participation in Public Procurement, Journal of Public Procurement, Volume 17, Issue 1, 1-30, 2017

142. Ibid, p.5

143. Pagura, S. Pollock, R. and Mussani, S, Investing in Localism: How local authorities can provide good finance for community business, Power to Change, 2018

CHAPTER 3 AN AGENDA FOR FAIRER PROCUREMENT

Despite significant improvements in the last decade, public procurement in the UK remains some way from embodying the principles of deep and embedded social value, fair competition, and transparency set out in the previous chapter. This chapter sets out the steps we need to take to realise these principles, making ten recommendations across three key themes:

- Deepening and embedding social value
- Discouraging corporate tax avoidance
- A more transparent procurement environment

DEEPENING AND EMBEDDING SOCIAL VALUE

A social value approach to procurement can bring a range of benefits. It can get us closer to ‘genuine’ value for money - vital in a time of constrained public spending. It can also allow for consideration of all the non-financial aspects of our lives often neglected by narrow economic approaches to procurement.

This is why Demos welcomes the steps the government has taken to embed social value in procurement, beginning with the Public Services (Social Value) Act 2012 and taken further recently by the Department for Digital, Culture, Media and Sport’s Civil Society Strategy. However, notwithstanding these achievements, the government cannot afford to rest on its laurels; steps must be taken to ensure that social value is more deeply embedded and extended within public procurement.

We believe the Cabinet Office’s recent consultation on a proposed scorecard evaluation model is a good first step to enable procurement teams

in central government to use a standardised, accepted way to evaluate social value in procurement contracts.¹⁴⁴ A standardised approach will be essential for suppliers to adopt social value approaches the best they can.

However, for the scorecard to have the desired outcomes, we believe that the specificity of social value in procurement should be increased. This is because there are concerns that it is often too broad a concept for commissioners to confidently apply.¹⁴⁵ At a strategic level government needs to provide more specification about the types of social value it wishes to see. We therefore recommend that:

Recommendation 1: Government should establish priority social value standards for departments in order to pursue select, strategic cross-government objectives, for example related to carbon emissions and fair tax practices. Departments should produce their own social value standards which would build upon these in matters relevant to their work.

These standards could also play an important role in meeting cross-government objectives, for example, net zero carbon emissions by 2050. Moreover, some of the social value criteria suggested in the social value scorecard are either already common practices among providers, or should be, for example: prompt payment, equal gender pay and cybersecurity measures.

Additionally, these criteria fit a ‘yes or no’ binary so it is more practical to consider them as either ‘pass or fail’, rather than a qualitative review in the evaluation process. We therefore recommend that some of these criteria should be included in the prequalification stage to ensure best practice is

144. Cabinet Office, Open Consultation: Social value in government procurement, 2019

145. Social Enterprise UK, Putting Social Value at the Heart of Inclusive Growth, 2019; Lord Young, Social Value Act Review, Cabinet Office, 2015

upheld across the market:

Recommendation 2: Central government departments should include social value bare minimum standards that are pass or fail in the pre-qualification criteria (i.e. determines whether a bid is considered in the evaluation process by procurement teams).

In addition, it is also important that all suppliers, irrespective of size, can continue to offer competitive goods, works, and services for government contracts. A competitive market with a range of supplier sizes, from micro-businesses to larger strategic suppliers, is essential to improving the quality and value for money across the public sector markets.

However, as found in Chapter Two, the trend of increasing SME participation in public procurement has stalled in recent years. This suggests that further steps need to be taken to ensure that procurement processes are well-suited to SMEs. In 2011 the Cabinet Office took a practical first step towards ensuring SME voice is heard in central government procurement by creating a SME panel made up of representatives who provide counsel to Cabinet Office policy directors.¹⁴⁶ Whilst a good first step, the continuation of strategic suppliers dominance suggests there is a need to go further.

A first step would be to ensure that central government departments with the greatest spend on procurement have its own bespoke SME panel that listens to the barriers SMEs might face when participating in public procurement rounds. Further steps would ensure each panel's discussions and meetings have tangible outcomes for departments to work on, smoothing over barriers by publishing and disseminating action points post panel meetings. Procurement teams and contract managers should also attend to ensure that those working on-the-ground developing and managing contracts are aware of what can create barriers for SMEs. We therefore recommend that:

Recommendation 3: The three central government departments with the highest procurement spend (Department of Health and Social Care, Ministry of Defence and Department for Transport) should create a Small Medium Enterprise (SME) advisory panel to help departments make it easier for SMEs to bid and win contracts with them. This should consider,

among other things, how to ensure new social value criteria is achievable for SMEs.

DISCOURAGING CORPORATE TAX AVOIDANCE

We have seen in earlier chapters that public procurement can deliver important social and economic outcomes beyond the provision of services or purchase of goods. This could include discouraging companies that regularly bid for government contracts – and therefore whom the government holds a relatively large degree of influence over – from engaging in tax avoidance.

In recognition of this, in Autumn 2012 the government announced its intention to use its purchasing power to reduce tax avoidance by its major suppliers.¹⁴⁶ The following year's Budget introduced a requirement for bidders to self-certify as tax compliant, with a failure to certify excluding them from participation in the competition.¹⁴⁸

These changes require any business bidding for public money to disclose whether HMRC has successfully challenged it under the General Anti-Abuse Rule (GAAR), new legislation introduced in 2013 to tackle tax avoidance, and whether it has been involved in a scheme that failed under the Disclosure of Tax Avoidance Scheme (DOTAS), amongst a number of other requirements. If a firm fails either of these tests it is unable to bid for a government contract.

Whilst this is a commendable first step, its scope of application is extremely limited. This is because whilst the GAAR might be effective at tackling tax avoidance schemes used by individuals, it was never designed to deal with the type of international tax planning deployed by multinational companies. As explained by Lord MacGregor, then-Chairman of the House of Lords Economic Affairs Sub-Committee on the Finance Bill:

*"There is a misconception that GAAR will mean the likes of Starbucks and Amazon will be slapped with massive tax bills. This is wrong and the Government need to explain that to the public. GAAR is narrowly defined and will only impact on the most abusive of tax avoidance."*¹⁴⁹

Similarly, DOTAS regulations appear unlikely to cover the tax minimising behaviour of big international companies. DOTAS requires

146. Crown Commercial Service, Small Business Panel members - Terms of Reference, 2016

147. HM Treasury and HM Revenue and Customs, 2010-2015 Government Policy: Tax Evasion and Avoidance, Policy Paper, 2015

148. Ibid

149. Lords Select Committee, Lords Committee say General Anti-Abuse Rule 'Narrow' and will not deal with Controversial Tax Planning Techniques used by Big Business, UK Parliament, Press Release, 2013

accountants and financial advisers that sell tax avoidance schemes to notify HMRC of any new scheme, with each new scheme given a reference number and certain schemes challenged in the courts. However, as the Oxford University Centre for Business Taxation points out, DOTAS was designed to deter avoidance that makes use of defects in domestic law or avoidance which can already be tackled within existing law frameworks; it was not designed to tackle avoidance in which companies use the international tax framework to their advantage.¹⁵⁰

It is clear that the two main legislative underpinnings of the government's anti-avoidance approach to public procurement will not tackle the tax avoiding behaviour of firms that utilise international arrangements to minimise their tax contributions. In light of these failings, there is a strong case for exploring other avenues to try and shift the behaviour of its big suppliers. As Chapter Two demonstrated, a number of strategic suppliers to the government have subsidiary or parent companies in international jurisdictions that are non-compliant with international tax governance standards.

One approach may be through the social value provisions in the current public procurement framework. The Public Services (Social Value) Act requires commissioners to consider the 'additional value' offered by the organisation under consideration. This includes social and economic benefits not directly provided as part of the initial contract, as expressed in the Act:

"Improve the economic, social and environmental well-being of the relevant area and how, in conducting the process of procurement [the public authority] might act with a view to securing that improvement."

There is a strong case that these considerations should encompass the tax contribution of potential contractors, which we set out below.

Consider a contracting authority is faced with choosing between Company A, a firm paying UK tax without recourse to international avoidance measures, and Company B, a firm located, or with subsidiaries or parent and associated companies located in a so-called 'tax haven.'

Given the critical role that taxation plays in delivering public goods and services vital to our

economic, social and environmental wellbeing, there is a strong case that - holding other factors equal - entering into a contract with Company A could deliver - through additional tax revenue - greater social value than Company B. It is also clear that on the basis of the government's current anti-avoidance approach to public procurement, provided that Company B had not fallen foul of GAAR or DOTAS, an approach favouring Company A would not happen.

Therefore, if public authorities wish to discourage a broad definition of tax avoidance - the use of international tax schemes to minimise their UK tax liability - then the framework provided by the Social Value Act could offer a useful starting point for doing so.

In particular, social value pre-qualification criteria, which a supplier has to pass or fail to be invited to submit a bid for tender, could be an opportunity to strengthen the government's scrutiny of companies tax behaviour. For example, one option might be extending GAAR and DOTAS so that the supplier also has to calculate and submit their Effective Tax Rate (ETR) to contracting authorities before being invited to submit a full bid. This could be used to ensure that government suppliers pay a minimum ETR and prevent them from using countries that are non-compliant with international tax governance standards to reduce their tax rate. We therefore recommend that:

Recommendation 4: Social value minimum standards - see recommendation 2 - for public procurement rounds should include criteria relating to a bidder's exchequer contribution. For example, bidders could be expected to meet a certain Effective Tax Rate to pre-qualify for that procurement round.

Furthermore, we recommend that the government do more to exploit current legislation to discourage poor corporate behaviour with respect to tax avoidance:

Recommendation 5: The government should take advantage of existing provisions in EU competition law to ensure that companies do not gain an unfair advantage over their competitors by using international tax arrangements. Contractors part of a group wholly or in part owned in tax havens, or which maintains one or more subsidiaries in jurisdictions credibly identified as tax havens

150. Oxford University Centre for Business Taxation, A review of the Disclosure of Tax Avoidance Schemes regime (DOTAS) and the tax avoidance landscape, The University of Oxford, 2012

- for example, by inclusion on the EU's 'black' or 'grey' lists - should be required to show that their usage of such jurisdictions does not entail a tax position which provides a competitive advantage relative to companies not using jurisdictions in this manner.

Recommendation 6: The government should take advantage of anti-corruption provisions to exclude from any public contract a supplier whose ultimate beneficial ownership is secret above the value of 5%, in order to ensure that no conflict of interest is entailed.

TOWARDS AN OPEN DATA MODEL FOR UK PUBLIC PROCUREMENT

Transparency is critical for a well-functioning procurement system, boosting public trust in the system and helping to deliver better commissioning outcomes. But despite improvements in the last decade we remain too far away from a fully transparent approach to public procurement. As the Public Accounts Committee notes, "transparency is key but still too many contracts are secretive or opaque."¹⁵¹ This demands a sea change in the openness of government contracting.

The government has announced its intention to encourage the publication of more contract information online on Contracts Finder in its 2019-2020 National Action Plan for Open Government. It specifies contracting authorities should aim to publish information about the supplier who won the contract, including whether they are domestic or internally based. It also calls for the civil service to work towards creating a register for all UK contracts above a certain threshold and a standardised model for evaluating contracts published online in Contracts Finder. The Outsourcing Playbook also mandates contracting authorities create and publish a minimum of three KPIs per contract;¹⁵² this should be a core constituent of the transparency agenda and given appropriate resources to be achieved.

Whilst the commitments made in the Playbook and National Action Plan are welcome, and indicate a move towards an open data model, there is the opportunity to go further. We believe that central government should be making further commitments to publish all contracts online, in a structured format as well as a redacted version of award notice. This kind of approach - which creates an online registry of contracts - has been used in other European countries such as Portugal and

Slovakia, who, as a result of using e-procurement, have generally increased transparency, competition and effectiveness of government contracting.¹⁵³

Information in the proposed register for awarded contracts should go further than the supplier, the contract's start and end date, three key performance indicators (KPIs), and a description of the contract. It should also include the size of the supplier, some form of explanation or justification for why they won the bid, the cost of the contract, the decided social value targets, and how many suppliers bid for the contract. These should all be published online in a publicly available register. This has been previously recommended by the Public Accounts Committee, which argued:

"A standard set of contract information should be made publicly available after a contract has been agreed. That information must include the contract value, length and KPIs, together with a list of other public sector contracts won by the successful company."¹⁵⁴

In line with this we recommend that:

Recommendation 7: Central government should move to an Open Data Model for spending data. This should include Open Data standards covering every government contract and award notice, and a clear, transparent register of public sector procurement authorities.

It should be acknowledged that this Open Data model will likely come with increased administrative burdens for both the public sector and suppliers. These costs should be accounted for, in particular in relation to smaller suppliers who might be disproportionately affected. To protect smaller organisations (i.e. those with under 250 staff) from extra administrative burdens, the administrative cost of publication could be automatically written and included in the contract by central government. We therefore recommend:

Recommendation 8: To incentivise buy-in from companies for the Open Data Model, the extra administrative burdens of transparency should be written into the costs of the contract by default.

Current regulations that require commissioning authorities publish tenders over a certain threshold online are not being adhered to; the majority of contracts are not published on Contracts Finder.¹⁵⁵ This does not make Demos hopeful about the

151. The House of Commons Select Committee on Public Accounts, Strategic Suppliers, Fifty-Eighth Report of Session 2017-19, 2018

152. Government Commercial Function, The Outsourcing Playbook: Central Government Guidance on Outsourcing Decisions and Contracting, 2019

153. The European Commission, Sources of Good Practice, Public contract registry, available at https://ec.europa.eu/regional_policy/sources/good_practices/GP_fiche_23.pdf (accessed 20/08/2019)

154. House of Commons Committee on Public Accounts, Strategic Suppliers, Fifty-Eighth Report of Session 2017-19, 2018, p.17

prospect for new requirements that do not have sufficient teeth.

It is vital, therefore, to consider what steps can be taken to ensure that public bodies can better hold contracting authorities to account. The National Audit Office (NAO), an independent Parliamentary body that scrutinises public spending, has proven itself to be a considerable force for good in the public realm and we would like to see its formal role in scrutinising public procurement extended:

Recommendation 9: The National Audit Office should conduct an annual report on central government procurement transparency, presented to Parliament. This should include a 'league table' ranking of departments, with the bottom three departments having to make an oral statement to the House.

The NAO would incentivise contracting authorities to publish information in a timely manner, moving towards real-time information for the performance of government contracts. As well as boosting the power of the NAO, we believe it is essential to extend the public and other organisation's ability for scrutiny and to hold government suppliers to account.

The FOIA has boosted transparency across the public sector, but these benefits have not been felt so keenly in public procurement. This is because the provisions of the FOIA generally do not apply to private sector providers delivering

public services. However, as the Information Commissioner's Office have highlighted, external providers are responsible for roughly one third of total government expenditure, and therefore play a crucial role in the delivery of public services.¹⁵⁶ The lack of transparency is also therefore an issue of democratic accountability, as citizens are unable to scrutinise the behaviour of private companies providing services. We agree with the Public Accounts Committee who concluded, when considering the matter in 2012:

*"...In the interests of transparency, where private companies provide public services funded by the taxpayer, those areas of their business which are publicly funded should be subject to the Freedom of Information Act provision."*¹⁵⁷

To address this, we recommend, in line with the Private Member's Bill in the House of Commons on this matter:¹⁵⁸

Recommendation 10: The requirements of the Freedom of Information Act (FOIA) should be extended to public sector contractors, through an amendment to the FOIA stipulating that all information held in connection with the performance or future performance of the contract should be considered under the domain of the FOIA.

These new transparency requirements should be integrated with the current National Action Plan on Open Government 2019-2021 and the next Government Action Plan on Open Government beginning in 2021, so that both departments and businesses have sufficient time to prepare for these changes.

155. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement: The scale and nature of contracting in the UK, The Institute for Government, 2018; Spend Network, Assessing the transparency gap in public procurement: a report for the Information Commissioner, 2019

156. Information Commissioner Office, Outsourcing Oversight? The Case for reforming access to information law, 2019

157. House of Commons Committee of Public Accounts, Department for Work and Pensions: the introduction of the Work Programme, The Stationery Office, 15 May 2012, p.6

158. Frances Everitt, The Freedom of Information (Extension) Bill: Extending FOIA and EIR to contractors, FieldFisher, 2019

APPENDIX

METHODOLOGY FOR STRATEGIC SUPPLIER TAX HAVEN CALCULATIONS

Background

Strategic suppliers are organisations that receive £100m or more in revenue from the government. According to estimates, in 2016/2017 they accounted for around a fifth of central government procurement spend.¹⁵⁹

There are currently 34 Strategic Suppliers providing services across the public sector, from telecoms to prison services.¹⁶⁰ The use of strategic suppliers has come under particular scrutiny in the wake of the collapse of outsourcing giant Carillion, and the more recent numerous profit warnings posted by Interserve, leading to concerns about the potential for another high profile insolvency.¹⁶¹

Other strategic suppliers, such as Vodafone, have come under additional scrutiny for their tax minimisation practices, predominantly through operating in states with a particularly low rate of corporation tax. The vast sums of public money being spent with strategic suppliers surely warrants a higher standard of investigation.

How did we find out which companies had operations in tax havens?

Demos sought to identify which of the 34 Strategic Suppliers to government are part of a corporate group with subsidiaries and/ or parent companies registered in overseas jurisdictions credibly designated as 'tax havens'. The research relied principally on company reports, records filed at Companies House and at the Securities and Exchange Commission in the United States and, in a few cases, company websites.

It is important to note, that having operations in overseas jurisdictions that we have defined as a 'tax haven' (using the Tax Justice Network's Corporate Tax Haven Index) does not mean said strategic supplier is avoiding paying taxes - there are various

credible reasons for having operations in said countries. It can nonetheless be considered an indicator.

Findings

Twenty-five of the government's 34 Strategic Suppliers (73.5%) were part of a corporate group including one or more subsidiaries in tax havens (defined by the Tax Justice Network's Corporate Tax Haven Index 2019), excepting US mainland, EU or Single Market jurisdictions, according to public records.¹⁶² Seventeen of those (50%) were part of a corporate group with subsidiaries in British Overseas Territories or Crown Dependencies.

Figures for just 20 of the 25 Strategic Suppliers who were part of a corporate group including one or more subsidiaries in tax havens show that they were awarded more than £41 billion of government contracts between 2011 and 2017. Figures for 14 of the 17 Strategic Suppliers with subsidiaries in British Overseas Territories or Crown Dependencies show that they were awarded more than £32 billion worth in the same period.

Of the 34 strategic suppliers, 19 were part of a corporate group including one or more subsidiaries in jurisdictions included on the EU's 'blacklist' or 'grey list'.¹⁶³ According to figures kindly provided by Spend Network, 17 of the 19 show that they were awarded more than £27 billion worth of contracts between 2011 and 2017.

Demos makes no claim concerning the appropriateness or otherwise of the tax paid by any of the Strategic Suppliers.

Each of the 19, plus Puerto Rico, St Kitts and Nevis, Barbados and the US Virgin Islands (also amongst jurisdictions used by Strategic Suppliers), were also on the Financial Secrecy Index 2018, also compiled by TJN, with "secrecy scores" concentrated in the top half of the sample, with the lowest-scoring non-

159. Nick Davies, Oliver Chan, Aron Cheung, Gavin Freeguard, Government procurement The scale and nature of contracting in the UK, The Institute for Government, 2018

160. Cabinet Office, Crown Representatives and Strategic Suppliers, April 2019

161. The Economist, Interserve goes to intensive care, 2018

162. Tax Justice Network, Corporate Tax Haven Index - 2019 Results, Webpage, 2019, online at <https://corporatetaxhavenindex.org/introduction/cthi-2019-results> (accessed 10/06/2019)

163. Oxfam International, Full disclosure of the EU's blacklist of tax haven, online at <https://www.oxfam.org/en/even-it/full-disclosure-eus-blacklist-tax-havens> (accessed 10/06/2019); Francesco Guarascio, EU adds UAE, Bermuda to expanded tax haven blacklist, Reuters, 2019

164. Tax Justice Network, Financial Secrecy Index - 2018 Results Webpage, 2018, online at <https://www.financialsecrecyindex.com/introduction/fsi-2018-results> (accessed 10/06/2019)

EU jurisdiction being Jersey.¹⁶⁴ These conclusions do not change whether the list of 19 or the list of 23 is used, because every group which uses one of the additional four also uses one of the other non-US/EU/SM tax havens.

The EU publishes a tax haven 'blacklist' and a 'grey list' the former referring to countries that have not made commitments to change their practices and the latter being those that have made commitments to reforms but not yet delivered them.¹⁶⁵ All the countries included on the EU's lists are also on the Corporate Tax Haven Index (but not vice versa), although Switzerland is not included in the list of 14 used by Demos to calculate the totals above due to its membership of the single market.

¹⁶⁴ The European Commission, Evolution of the EU list of tax havens, 2019, online at https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_list_update_12_03_2019_en.pdf; The European Commission, Fair Taxation: EU updates list of non-cooperative tax jurisdictions, Press Release, 2019 online at https://europa.eu/rapid/press-release_IP-19-1606_en.htm (accessed 23/08/2019)

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