

# Ethical Procurement Policy Statement

*Approved by the Rt. Caroline Spelman MP  
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– March 2011*

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# Defra's Ethical Procurement Policy Statement

*Government policy is that value for money must be assessed over the lifetime of a project, including disposal (either sale proceeds or decommissioning costs), estimating the costs and benefits to society as a whole, not simply those directly relevant to the purchaser.*

Treasury's Green Book: Appraisal and Evaluation in Central Government<sup>1</sup>

## Introduction

This statement sets out Defra's policy on ethical procurement. It is based largely on the following principles with advice on how to put them into practice:

- Working conditions are safe;
- Good health is promoted;
- Employment is freely chosen;
- Working hours are not excessive;
- Wages meet at least national legal standards;
- Training is provided;
- No discrimination is practised;
- Diversity and good workforce practices are encouraged;
- Child labour is eliminated;
- No inhumane treatment is allowed.

The Cabinet Office's principles of good employment practice for Government contracting authorities and suppliers issued on 13 December 2010 are reflected in this statement. They cover: Government as a good client; training and skills; commitment to fair and reasonable terms and conditions; equality; dispute resolution; and employee engagement.<sup>2</sup>

Defra's agencies and NDPBs<sup>3</sup> may wish to adopt or adapt this statement where they do not already have one in place.

## Purpose

Defra is working within the legal framework<sup>4</sup> governing public procurement to purchase goods, services and works that support Government policies to achieve value for money<sup>5</sup>,

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<sup>1</sup> Treasury's Green Book - [http://www.hm-treasury.gov.uk/data\\_greenbook\\_index.htm](http://www.hm-treasury.gov.uk/data_greenbook_index.htm)

<sup>2</sup> Cabinet Office's principles of good employment practice are published on its web site at <http://www.cabinetoffice.gov.uk/resource-library/principles-good-employment-practice>

<sup>3</sup> There is a "Delivery landscape map" showing how Defra and its delivery bodies fit together - <http://www.defra.gov.uk/corporate/about/with/delivery/landscape/landscape-map.htm>

<sup>4</sup> Public procurement in the UK and the European Union is governed by a legal framework comprising the *EU Treaty* ([http://europa.eu/abc/treaties/index\\_en.htm](http://europa.eu/abc/treaties/index_en.htm)) and a number of Directives and Regulations implemented in national legislation. The Procurement Directives and the corresponding UK Regulations are listed on the OJEU web site at <http://www.ojec.com/Directives.aspx>. They are designed to ensure that public procurement is fair, transparent and not used to discriminate by setting up barriers to free trade. See also section below.

<sup>5</sup> Treasury's guide "Managing Public Money" (2007) defined "value for money" as "securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought" - [http://www.hm-treasury.gov.uk/d/mpm\\_whole.pdf](http://www.hm-treasury.gov.uk/d/mpm_whole.pdf). It stated that: "This may not always mean choosing the immediately cheapest option since, for instance, it may be more cost effective to buy a more reliable service or a better quality asset with lower maintenance costs and a longer operating life."

improve efficiency<sup>6</sup>, increase sustainability<sup>7</sup> and support the big society<sup>8</sup>. This includes promoting good governance, social cohesion and a fairer world by encouraging participation, inclusion and equal opportunities and engaging people's creativity, energy and diversity.<sup>9</sup>

Research conducted by the Harvard Business School's Institute for Strategy and Competitiveness, for example, shows that by growing and mentoring suppliers in their communities: large corporations can enhance the efficiency of their supply chains giving them not only a competitive edge but also achieving local benefits in terms of employment, career ladders and improving inner city economies.<sup>10</sup>

### Legal framework

All public procurement must be carried out in accordance with the EC Treaty and EC Public Procurement Directives.

This legal framework requires contracting authorities to award certain contracts, whether these are subject to the procurement rules<sup>11</sup> or not, in line with EC Treaty principles, including the principles of non-discrimination, equal treatment, transparency, procedural fairness, mutual recognition and proportionality.

In accordance with the procurement rules, it is therefore necessary to ensure that ethical issues are relevant to the subject matter of the contract and consistent with the Government's procurement policy based on value for money.<sup>12</sup> This excludes public bodies from considering within the procurement process how companies providing the goods and services manage their business generally, beyond relevant legal obligations such as on health and safety and employment.

Ethical considerations that are "relevant" to the subject matter of the contract may arise where there is a risk to Defra from a supplier being unable to deliver the product or service to time and of sufficient quality due to say insufficient health and safety provisions for its employees. If a clear link can be established between poor conditions of employment and the ability or

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<sup>6</sup> Government programme to make efficiency savings, e.g. in public procurement by championing and facilitating collaboration, using framework agreements and e-procurement tools; reducing the negative environmental impact of goods and services purchased and working with suppliers to improve their sustainability performance.

<sup>7</sup> See Defra's Sustainable Procurement Policy Statement - <http://www.defra.gov.uk/corporate/about/how/procurement/policy.htm>

<sup>8</sup> The Big Society was launched in the 2010 Conservative manifesto. Its stated priorities are to: give communities more powers through localism and devolution; encourage people to take an active role in their communities by increasing volunteerism; transfer power from central to local government; support civil society organisations (e.g. co-ops, mutuals, charities and social enterprises); and promote more open and transparent government by making available more government data for public scrutiny. The Cabinet Office provides an overview of the Big Society at <http://www.cabinetoffice.gov.uk/content/big-society-overview>.

<sup>9</sup> Guiding principle from "One future: different paths" - <http://www.defra.gov.uk/sustainable/government/documents/SDFramework.pdf>; UK's shared framework for sustainable development.

<sup>10</sup> The Institute for Strategy and Competitiveness, led by Professor *Michael E. Porter*, studies competition and its implications for: company strategy; the competitiveness of nations, regions and cities; and solutions to social problems - <http://www.isc.hbs.edu/>.

<sup>11</sup> Public sector procurement is governed by the Public Contracts Regulations 2006 that implement the EU procurement Directives (Directive 2004/18/EC) – often referred to as "*the public procurement rules*". These apply to certain procurements with a total value over a specified threshold. They also require that contracts are awarded in accordance with certain standard procedural rules (e.g. on timescales for the contracting process, information that potential suppliers should provide; and the basis on which bids may be assessed). Procurements not caught by the Directive are still subject to EC Treaty principles on equal treatment such as non-discrimination, mutual recognition, proportionality and transparency.

<sup>12</sup> Guidance on the legal framework is given on Cabinet Office Efficiency and Reform Group's web site at [http://www.ogc.gov.uk/key\\_cross-cutting\\_government\\_policies\\_the\\_policy\\_and\\_legal\\_framework.asp](http://www.ogc.gov.uk/key_cross-cutting_government_policies_the_policy_and_legal_framework.asp). The ERG (i.e. Efficiency and Reform Group) took over responsibility for public procurement from the Office of Government Commerce (OGC) in 2010.

motivation of an employee to maintain required quality standards, this will be relevant to the delivery of services or manufacture of products.<sup>13</sup>

### **Wider benefits**

The championing of ethical practices along supply chains – particularly in those companies operating in developing countries – can bring wider benefits to society and the taxpayer.

For instance, the pursuit of ethical practices can help tackle environmental degradation, resource depletion, economic exploitation and poor education and training that through, for example, poverty, food deficiency, conflicts and inequity contribute to movements of populations. Such movements can affect the quality of the natural environment, increase the likelihood of further conflict, and reduce social cohesion between ethnic groups.

Where ethical considerations are not directly relevant to the subject matter of the contract: they may be considered in partnership with the supplier outside the procurement process to identify solutions and to anticipate and resolve problems in a constructive and collaborative way.

### **Principles**

Defra expects its suppliers to maintain high standards of integrity and professionalism in their business dealings, adhering to the laws of the countries where they operate and taking action where necessary to minimise negative impacts and potential risks.

Defra therefore asks its suppliers to abide with the following principles where proportionate and directly relevant to the subject matter of the contract. These are not normally included in the subject matter of contracts as most are governed by labour law within the EU and, as such, are legal requirements which if breached would be grounds for excluding the supplier for non compliance.

Public sector bodies may also work in partnership with suppliers to pursue wider ethical issues outside the public procurement process.<sup>14</sup> This must however be done post-award and on a voluntary basis as contracts must not set standards that exceed EU law, as this may deter bidders from member states and could be challenged as a restriction on free trade.<sup>15</sup>

#### *Acting with integrity and transparency*

There is a strong public interest in public procurements to ensure that:

- Procurement processes are conducted in an open and honest way;
- There is transparency in the spending of public money;
- Suppliers have systems in place to ensure high standards of propriety which make sure public money is used for the purpose it is intended.

#### *Working conditions are safe*

- Operate appropriate health and safety policies and procedures overseen by a senior manager responsible for compliance and monitoring and ensuring employees have the necessary training and health and safety equipment.

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<sup>13</sup> Source: "Buying Matters: sourcing fairly from developing countries" - [http://www.responsible-purchasing.org/downloads/Buying%20Matters\\_small.pdf](http://www.responsible-purchasing.org/downloads/Buying%20Matters_small.pdf). The Electronic Industry Citizenship Coalition (EICC) has established a Code of Conduct for participating companies (including household names) to ensure worker safety and fairness, environmental responsibility, and business efficiency - <http://www.eicc.info/EICC%20CODE.htm>.

<sup>14</sup> Business to business purchasing is not covered by the legal framework governing public procurement enabling companies to take decisions which could be considered unfairly discriminatory if pursued in the public sector.

<sup>15</sup> See footnote 15 below covering the ECJ ruling in the case C-346/06 - *Dirk Ruffert v Land Niedersachsen*.

- Provide comfortable and hygienic working conditions with clean toilets and water suitable for drinking and washing. Where worker housing is provided it should meet the same standards for health and safety as the workplace.

#### *Good health is promoted*

- Invest in measures for tackling ill health as healthy employees experience a better quality of life and tend to be more productive.

#### *Employment is freely chosen*

- Afford employees the freedom to choose to work and not use forced, bonded or non-voluntary prison labour.
- Afford employees freedom of association with the right to join an independent trades union or other workers' associations and to carry out reasonable representative functions in the workplace.
- Facilitate alternative means of democratic representation where laws restrict freedom of association and collective bargaining.

#### *Working hours are not excessive*

- Comply with national and international laws or industry standards on employee working hours, whichever affords greater protection.

#### **Working hours**

Employees should not be expected to work more than 48 hours a week on a regular basis and, on average, receive one day off about every seven days. Overtime should be voluntary and not be demanded on a regular basis and where required it should be reimbursed at an appropriate rate and not exceed 12 hours in any week.

- Provide clear, easily understood disciplinary, grievance and appeal procedures that are lawful and appropriate. Any disciplinary measures should be recorded and suppliers should not seek to deprive employees of their legal or contractual rights.

#### *Minimum wages*<sup>16</sup>

- Provide wages and benefits at rates that meet at least national legal standards.<sup>17</sup>
- Provide employees with an easy to read contract of employment clearly explaining wage levels. Where employees are unable to read, the contract should be explained to them by a union representative or another appropriate third party.

Wages should be in cash and not in kind (e.g. goods, vouchers) with no deductions made unless permitted under national law or agreed by the employee, without duress.

#### *Training is provided*

- Raise employees' skills<sup>18</sup> through training and access to professional development as befits their role to improve quality and secure greater value for money.<sup>19</sup>

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<sup>16</sup> The ECJ ruled in the case C-346/06 - *Dirk Ruffert v Land Niedersachsen* that: a legislative measure requiring that public contracts only be awarded to undertakings that paid their employees at least the minimum prescribed by collective agreement at the place where the contracts were to be performed was incompatible with the freedom to provide services. The ECJ held that such a requirement may deter bidders from member states where the wages are lower, and could therefore be seen as a restriction on the freedom to provide services that could not be justified as being necessary for the protection of workers. The judgment does not preclude the mandating of a minimum wage that is prescribed by law, such as the National Minimum Wage in the UK, or a collective agreement or arbitration award that has been declared as "universally applicable" in the Member State concerned. Advice is given in the ERG Procurement Policy Note - Quarterly Update, March 2009: [http://www.ogc.gov.uk/documents/PPN\\_Update\\_03\\_09.pdf](http://www.ogc.gov.uk/documents/PPN_Update_03_09.pdf). NB. The Judgement is also relevant to other areas covered by the Posted Workers Directive.

<sup>17</sup> For example, the minimum wage and other terms and conditions of employment for workers employed in agriculture are set by the Agricultural Wages Board - <http://www2.defra.gov.uk/food-farm/farm-manage/wages/>. More advice of employers is given on the Business Link web site - <http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1082262665>.

### *No discrimination*

- Practice no discrimination in hiring, compensation, training, promotion, termination or retirement either directly or indirectly – see section on the Equality Act 2010 below.<sup>20</sup>

### *Disputes procedure*

- Provide clear and accessible processes for resolving disputes with employees.<sup>21</sup>

### *Child labour is eliminated*

- Support the elimination of child labour.<sup>22</sup>
- Provide for any children found to be performing child labour to attend and remain in quality education until no longer a child.<sup>23</sup>
- Ensure no children and young persons<sup>24</sup> are employed at night or in hazardous conditions, as defined by the International Labour Organisation.

#### **Child labour**

The Government fully supports the internationally agreed core labour standards and, as a member of the International Labour Organisation (ILO), is obliged to promote human rights as they apply to work and employment.

The ILO Minimum Age Convention (No.138), supplemented by Recommendation No.146 requires ratifying States to pursue a national policy to ensure the effective abolition of child labour and progressively to increase the minimum age for employment or work.

The Convention on the Rights of the Child, including Article 32, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

Abruptly stopping children working in export industries without ensuring alternative income for the family or appropriate, good quality educational opportunities for the children is likely to be ineffective and to drive them into more hidden and harmful jobs.

The Government's approach is that effective implementation of labour standards is best achieved through partnership and voluntary action of Government, business and civil society. This can help to ensure that suppliers are aware of the importance of implementing and monitoring labour standards in their supply chains and supporting them in doing so.

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<sup>18</sup> Support is available to businesses taking advantage of the Government's apprenticeship scheme – see the Employers section of the National Apprenticeship Service's web site <http://www.apprenticeships.org.uk/>.

<sup>19</sup> . Government policy for promoting skills through public procurement is currently under review - [http://www.ogc.gov.uk/key\\_policy\\_principles\\_and\\_supporting\\_guidance\\_promoting\\_skills\\_through\\_public\\_procurement\\_.asp](http://www.ogc.gov.uk/key_policy_principles_and_supporting_guidance_promoting_skills_through_public_procurement_.asp)

<sup>20</sup> Successful and competitive businesses depend upon their ability to embrace diversity and to draw upon the skills, understanding and experience of all people. Advice is available on the Equality and Human Rights Commission's web site, including guidance provided with input from the CBI - <http://www.equalityhumanrights.com/advice-and-guidance/information-for-employers/benefits-for-employers-considering-equality-and-diversity/>. See also the Cabinet Office Efficiency and Reform Group's "Make equality count" - [http://www.ogc.gov.uk/documents/Equality\\_Brochure.pdf](http://www.ogc.gov.uk/documents/Equality_Brochure.pdf).

<sup>21</sup> The Government expects suppliers to consider using the services of the Advisory, Conciliation and Arbitration Service (ACAS) as an option when it has not been possible to resolve disputes by internal systems and processes - <http://www.acas.org.uk/index.aspx?articleid=1461>

<sup>22</sup> The course of action taken shall be in the best interest of the child, conform to the provisions of International Labour Organisation (ILO) Convention 138 and be consistent with the United Nation's Convention on the Rights of the Child.

<sup>23</sup> 'Child' refers to any persons less than 15 years of age, unless local legislation on the minimum age stipulates a higher age for work or mandatory schooling, in which case the higher age shall apply.

<sup>24</sup> "Young person" refers to any worker over the age of a child, as defined above, under the age of 18.

### *No inhumane treatment is allowed*

- Prohibit physical abuse or coercion, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation.

Suppliers should inform Defra about any concerns they have in applying the above principles. Additionally, they are encouraged to keep written records to demonstrate that their actions are fair and above reproach and, where relevant, report on progress and future planned activity if requested to do so by Defra.

### **Equality Act 2010**

One of the key priorities of the Coalition Government is to support economic recovery and remove unnecessary burdens on business. Another is to promote fairness.

The Coalition Government believes that *“there are many barriers to social mobility and equal opportunities in Britain today, with too many children held back because of their social background, and too many people of all ages held back because of their gender, race, religion or sexuality. We need concerted government action to tear down these barriers and help to build a fairer society”*.

From “The Coalition: our programme for government” -  
[http://www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf)

The Equality Act 2010 is a major simplification of discrimination legislation that makes the law easier to understand and comply with and delivers significant benefits for business, public bodies and individuals. It covers the same groups that were protected by existing equality legislation - age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity (referred to as “*Protected Characteristics*”) - but extends some protections to groups not previously covered, and also strengthens particular aspects of equality law.<sup>25</sup>

The Equality Act also includes a Public Sector Equality Duty.<sup>26</sup> This new duty is designed to embed equality considerations (i.e. the protected characteristics) into the day to day work of public bodies including their procurement, so that they tackle discrimination and inequality and contribute to making society fairer.<sup>27</sup>

### **Grounds for exclusion**

#### *Service providers*

Defra reserves the right to exclude a service provider where deemed ineligible to tender for, or be awarded a public contract under regulation 23 of the Public Contracts Regulations 2006<sup>28</sup>. Rejection of a service provider is permissible when the organisation:

- Is in a state of bankruptcy insolvency compulsory winding up, administration, receivership, composition with creditors or any analogous state, or subject to relevant proceedings;
- Has been convicted of a criminal offence related to business or professional conduct;

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<sup>25</sup> A copy of the Act is on the Equality and Human Rights Commission's web site at [http://195.99.1.70/acts/acts2010/pdf/ukpga\\_20100015\\_en.pdf](http://195.99.1.70/acts/acts2010/pdf/ukpga_20100015_en.pdf) and explanatory notes are at [http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen\\_20100015\\_en.pdf](http://www.opsi.gov.uk/acts/acts2010/en/ukpgaen_20100015_en.pdf). Further advice is on the Government Equalities Office's web site at [http://www.equalities.gov.uk/equality\\_bill.aspx](http://www.equalities.gov.uk/equality_bill.aspx).

<sup>26</sup> The new public sector duty will apply to service providers contracted to deliver a service to customers on Defra's behalf or directly to Defra's staff.

<sup>27</sup> Guidance on understanding and implementing the equality duty is given on the Government Equalities Office's web site at [http://www.equalities.gov.uk/equality\\_act\\_2010/public\\_sector\\_equality\\_duty.aspx](http://www.equalities.gov.uk/equality_act_2010/public_sector_equality_duty.aspx).

<sup>28</sup> The Public Contracts Regulations 2006 - Statutory Instrument 2006 No. 5 - [http://www.opsi.gov.uk/si/si2006/uksi\\_20060005\\_en.pdf](http://www.opsi.gov.uk/si/si2006/uksi_20060005_en.pdf)

- Has committed an act of grave misconduct in the course of business;<sup>29</sup>
- Has not fulfilled obligations relating to payment of social security contributions;
- Has not fulfilled obligations relating to payment of taxes;
- Is guilty of serious misrepresentation in supplying information required by the Authority under the Regulations;
- Is not in possession of a licence or not a member of the appropriate organisation where the law of that State requires it;<sup>30</sup>

Or

- Is not registered on the professional or trade register of the relevant State in which established.

In deciding whether to exclude a service provider Defra will consider the seriousness of the misconduct, whether it was related to the subject matter of the contract, when it was committed and the action taken or being taken to prevent its recurrence. This discretion will not apply to convictions for offences where there is a mandatory requirement on public sector contracting authorities to exclude candidates in accordance with regulation 23 of the Public Contracts Regulations 2006.<sup>31</sup>

### *Economic operators*

Part 4 of regulation 23 covers the criteria for the rejection of economic operators<sup>32</sup> where the contracting authority has actual knowledge that it or its directors or representatives have been convicted of certain offences. For example: conspiracy from participating in a criminal organisation, corrupt practices, bribery, theft, fraudulent trading and defrauding the European Communities, the Revenue and the Customs.

Regulation 23(2) makes provision for an exception to the mandatory exclusion of an economic operator. That is, if the contracting authority “is satisfied that there are overriding requirements in the general interest” which would justify such an exception, e.g. in the case of a national emergency.<sup>33</sup>

### **Technical specifications and standards**

Where relevant to the contract, Defra will use technical specifications and standards to integrate ethical considerations into procurement, such as standards for IT systems to ensure that they are accessible to people with disabilities and interoperable with software and hardware intended for disabled users.

The specification must be relevant to the requirement and must not discriminate against other products or providers from other member states, nor must it restrict competition. Unnecessary use of these principles may place an undue burden on small businesses and other organisations, which might have a disproportionate impact on their ability to compete and therefore be unlawful. In all cases, contracting authorities must be prepared to consider equivalent standards from suppliers from other countries (with different national standards) that

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<sup>29</sup> Conviction of such a criminal offence or commitment of an act of grave misconduct might relate to a conviction for breaching International Labour Organisation conventions on child or forced labour, more general conditions of work, mistreating employees or breaking employment or equality laws in countries where they operate.

<sup>30</sup> Subject to paragraphs (7), (8) and (9) of the regulation

<sup>31</sup> The Public Contracts Regulations 2006 - Statutory Instrument 2006 No. 5 - [http://www.opsi.gov.uk/si/si2006/uksi\\_20060005\\_en.pdf](http://www.opsi.gov.uk/si/si2006/uksi_20060005_en.pdf)

<sup>32</sup> Part 4 of regulation 23 covers the criteria for the rejection of economic operators convicted certain offences including conspiracy, bribery and fraud.

<sup>33</sup> See ERG's [Guidance on the Mandatory Exclusion of Economic Operators in the 2006 Procurement Regulations](#).

meet the underlying requirement. The onus is on the supplier to prove that the solution being offered meets the requirements.

## Defra family

In delivering this policy statement we will work with other organisations in the Defra family<sup>34</sup> engaged in collaborative procurement to:

- Highlight the priorities that the Government and contracting authorities are pursuing at home and abroad.
- Continue to provide tendering opportunities that are suitable for Small and Medium Enterprises (SMEs), Ethnic Minority Businesses (EMBs)<sup>35</sup>, civil society organisations and supported factories both directly and indirectly through first tier suppliers.<sup>36</sup>

### Supported factories and businesses

Public bodies are permitted under the 2006 Public Procurement Regulations to reserve the right to participate in public contract award procedures to supported factories and businesses or to economic operators, which operate supported employment programmes. A “supported factory” or “supported business” is an establishment where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.<sup>37</sup>

- Promote skills training, apprenticeship opportunities and graduate programmes among our suppliers to help tackle youth and graduate unemployment.
- Support the use of fairly traded goods<sup>38</sup> where this is within the legal framework governing public procurement.<sup>39</sup>

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<sup>34</sup> A diagram depicting the organisations comprising the Defra family is at

<http://www.defra.gov.uk/corporate/about/with/delivery/landscape/landscape-map.htm>

<sup>35</sup> ERG's publication: "Smaller supplier... better value?" URL:

[http://www.oqc.gov.uk/documents/CP0083\\_Small\\_supplier\\_better\\_value.pdf](http://www.oqc.gov.uk/documents/CP0083_Small_supplier_better_value.pdf)

<sup>36</sup> *'Winning the Contract'*, is a free online course developed by Government and hosted by Learn Direct that shows participants how to identify business opportunities to supply goods and services to the public sector, explains the public procurement process and demonstrates how to submit tenders.

<sup>37</sup> ERG's Guidance on reserved contracts for supported factories & businesses is set out at

[http://www.oqc.gov.uk/documents/Supported\\_Factories\\_Businesses.pdf](http://www.oqc.gov.uk/documents/Supported_Factories_Businesses.pdf). Supported Business Directory – for sourcing products from such businesses - <http://www.base-uk.org/business/>

<sup>38</sup> The UK is committed to achieving trade justice by improving trade with developing countries, e.g. Doha Development Agenda and Economic Partnership Agreements. Fair and Ethical Trade initiatives are significant because they help developing country producers access developed country markets and raise awareness of global trade relations and the situation of poor producers in poor countries.

<sup>39</sup> Advice for buyers is given in the: Efficiency and Reform Group's "guidance on fair trade and public procurement" -

[http://www.oqc.gov.uk/documents/Guidance\\_on\\_Fair\\_and\\_Ethical\\_Trading.pdf](http://www.oqc.gov.uk/documents/Guidance_on_Fair_and_Ethical_Trading.pdf); and EC's formal request to The Netherlands -

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1618&format=HTML&aged=0&language=EN&quiLanguage=en>. The Commission was of the opinion that the Province of Noord-Holland in awarding a contract through a European open tender procedure had failed to fulfil its obligations under the EU public procurement rules and that the award procedure did not meet the requirements flowing from public procurement Directive 2004/18/EC. In particular:

- The Province of Noord-Holland did not follow the provisions in the Directive on technical specifications, selection criteria and award criteria. The Province of Noord-Holland had requested the tenderers to supply tea and coffee with one or two specific labels concerning biological and ethically traded products, which is not allowed under Article 23 of Directive 2004/18/EC. Although the contracting authority stated it would accept comparable labels and products that meet the same or comparable criteria, the Commission noted that it did in any case not specify substantial criteria that could clarify to potential tenderers when a product would be comparable, which is not transparent for tenderers.
- Additionally, the Province of Noord-Holland also violated the rules on award criteria by using an award criterion under which additional points are granted to tenders that offer ingredients (sugar, milk) that have a specific fair trade or eco-label or a label comparable thereto. According to the Commission a contracting authority cannot use such an award criterion, since a label as such is not a criterion that is suitable to identify the economically most advantageous offer. The Commission also noted that the Province of Noord-Holland did not specify any substantial criteria in this regard.

- Encourage suppliers to offer solutions for delivering ethical requirements innovatively and cost effectively.
- Encourage suppliers to develop effective strategies for enhancing staff engagement to enable people to be the best they can at work.<sup>40</sup>
- Continue to improve the way in which suppliers are appointed and supply chains managed, audited and reported on.
- Retain records in accordance with the new Public Procurement Remedies Directives Directive 2007/66/EC<sup>41</sup> to demonstrate that procurement has been fair and transparent.
- Continue to treat suppliers fairly and equally at all times and to act impartially and objectively and with integrity and honesty throughout the procurement process.

#### **Civil Service Code**

Staff employed by Defra and its network organisations must like all government officials adhere to the Civil Service Code - <http://www.civilservice.gov.uk/about/values/cscodex/index.aspx>. This sets out the core values and standards of behaviour expected from them, such as the need for: integrity – putting the obligations of public service above personal interests; honesty – being truthful and open; and impartiality – acting solely according to the merits of the case. In addition, all procurers in Defra's Procurement and Professional Function are required to uphold the CIPS' code of professional ethics - <http://www.cips.org/aboutcips/whatwedo/codeofprofessionalethics/>.

- Make appropriate resources available to meet our stated commitments, including provision of guidance, awareness raising and training for staff and suppliers.
- Provide guidance outside the formal procurement process to suppliers who genuinely seek to promote and implement the standards into their own business processes and down their supply chains, where relevant and appropriate to do so.
- Monitor progress in implementing the policy and annually report on performance to stakeholders.
- Address breaches by suppliers of the ethical procurement policy.

#### **Communication**

We will communicate this policy both internally within the Defra family and externally. Copies of this policy will be placed with supporting documents on Defra's Procurement Intranet site and Suppliers' web site<sup>42</sup>.

*Defra's Procurement and Commercial Function – March 2011*

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- With regard to the selection of economic operators, the contracting authority did not assess the abilities of the tenderers only on the basis of the means listed in Article 48 of the Directive.

<sup>40</sup> A practical tool for engaging staff in service improvement is "Drive for Change" developed by Cabinet Office and the Trades Union Congress. It is currently being refreshed.

<sup>41</sup> The EC Remedies Directive since 20 December 2009 has obliged public bodies to keep records of their procurements - [http://ec.europa.eu/internal\\_market/publicprocurement/remedies/remedies\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/remedies/remedies_en.htm)

<sup>42</sup> Defra's suppliers' web site is at <http://www.defra.gov.uk/corporate/about/how/procurement/index.htm>.

## References

- The Ethical Trading Initiative (ETI) Base Code
- The UN Declaration on Human Rights - <http://www.un.org/Overview/rights.html>
- United Nations Global Compact - <http://www.unglobalcompact.org/AbouttheGC/TheTENPrinciples/index.html>
- SA8000 (a standard relating to social accountability developed by the Council on Economic Priorities Accreditation Agency in New York - now known as Social Accountability International (SAI))
- The Core Conventions of the International Labour Organisation (ILO)<sup>43</sup>
  - C1 – Hours of Work (Industry) Convention, 1919
  - C14 – Weekly Rest (Industry) Convention, 1921
  - C98 – Right to Organise and Collective Bargaining Convention, 1949
  - C100 – Equal Remuneration Convention, 1951
  - C105 – Abolition of Forced Labour Convention, 1957
  - C106 – Weekly Rest (Commerce and Offices) Convention, 1957
  - C111 – Discrimination (Employment and Occupation) Convention, 1958
  - C138 – Minimum Age Convention, 1973
  - C160 – Labour Statistics Convention, 1985
  - C161 – Occupational Health Services Convention, 1985
  - C174 – Prevention of Major Industrial Accidents Convention, 1993
  - C182 – Worst Forms of Child Labour Convention, 1999
  - C183 – Maternity Protection Convention, 2000
  - C187 – Promotional Framework for Occupational Safety and Health Convention, 2006
- Supply Chain Management in Public Sector Procurement: a Guide - <http://www.ogc.gov.uk/documents/SupplyChainManagementGuide.pdf>  
ERG guide designed to encourage contracting authorities to take a more sophisticated approach to supply chain management and understand both the role that they and their main suppliers must play in managing the supply chain.
- Buy and make a difference – how to address social issues in public procurement: [http://www.ogc.gov.uk/documents/Social\\_Issues\\_in\\_Public\\_Procurement.pdf](http://www.ogc.gov.uk/documents/Social_Issues_in_Public_Procurement.pdf)  
ERG publication that draws on real-life examples to show public procurers how they can help address social concerns both in what they buy and in the way they should expect suppliers to cater for social needs.
- Smaller Supplier - better value - [http://www.ogc.gov.uk/documents/CP0083\\_Small\\_supplier\\_better\\_value.pdf](http://www.ogc.gov.uk/documents/CP0083_Small_supplier_better_value.pdf)  
This ERG guide is designed to help buyers achieve efficiency in public procurement while improving the diversity of their supplier base by removing barriers to small businesses.
- ERG Procurement Site - <http://www.ogc.gov.uk/procurement.asp>. This is a one-stop focal point that deals with all aspects of procurement.

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<sup>43</sup> The full texts of ILO Conventions are available in the ILOLEX database at <http://www.ilo.org/ilolex/english/index.htm>