PARLIAMENTARY DEBATES

HOUSE OF COMMONS
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GENERAL COMMITTEES

Public Bill Committee

PROCUREMENT BILL [*LORDS*]

Third Sitting

Thursday 2 February 2023

(Morning)

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Monday 6 February 2023

The Committee consisted of the following Members:

Chairs: † Clive Efford, David Mundell

† Bhatti, Saqib *(Meriden)* (Con)
† Blackman, Kirsty *(Aberdeen North)* (SNP)
† Burghart, Alex *(Parliamentary Secretary, Cabinet Office)*
† Clarke-Smith, Brendan *(Bassetlaw)* (Con)
Duguid, David *(Banff and Buchan)* (Con)
† Eshalomi, Florence *(Vauxhall)* (Lab/Co-op)
† Evans, Chris *(Islwyn)* (Lab/Co-op)
† Fletcher, Nick *(Don Valley)* (Con)
† French, Mr Louie *(Old Bexley and Sidcup)* (Con)
† Gibson, Peter *(Darlington)* (Con)
Greenwood, Lilian *(Nottingham South)* (Lab)
† Jones, Gerald *(Merthyr Tydfil and Rhymney)* (Lab)
† Marson, Julie *(Hertford and Stortford)* (Con)
† Randall, Tom *(Gedling)* (Con)
† Russell-Moyle, Lloyd *(Brighton, Kemptown)* (Lab/Co-op)
Tracey, Craig *(North Warwickshire)* (Con)
Whitley, Mick *(Birkenhead)* (Lab)

Sarah Thatcher, Huw Yardley, Christopher Watson, *Committee Clerks*

† attended the Committee

Public Bill Committee

Thursday 2 February 2023

(Morning)

[Clive Efford *in the Chair*]

Procurement Bill [*Lords*]

11.30 am

The Chair: Before we begin, I remind Members that *Hansard* colleagues would be grateful if they could send their speaking notes via email to hansardnotes@parliament.uk. Please switch all electronic devices to silent. No tea or coffee is to be consumed during the sitting.

Clause 16

Preliminary market engagement

Florence Eshalomi (Vauxhall) (Lab/Co-op): I beg to move amendment 20, in clause 16, page 12, line 35, after "suppliers" insert

", including small and medium-sized enterprises,".

This amendment, with Amendment 21, seeks to ensure preliminary engagement explicitly refers to SMEs.

The Chair: With this it will be convenient to discuss the following:

Amendment 21, in clause 16, page 12, line 38, after "suppliers" insert

", including among small and medium-sized enterprises,".

This amendment, with Amendment 20, seeks to ensure preliminary engagement explicitly refers to SMEs.

Amendment 25, in clause 21, page 16, line 29, at end insert—

"(6A) Subject to subsection (6D), subsection (6B) applies where a tender notice or associated tender document indicates that a public contract is suitable for small and medium-sized enterprises.

(6B) If no small or medium-sized enterprise submits a tender, the contracting authority must withdraw the tender notice, and may not republish the tender notice until it has fulfilled the condition in subsection (6C).

(6C) The condition is that the contracting authority has conducted preliminary market engagement (see section 16) with a view to engaging with suppliers who are small and medium-sized enterprises.

(6D) Subsection (6B) does not apply if the contracting authority can demonstrate that it fulfilled the condition in subsection (6C) before the tender notice was published."

This amendment would require contracting authorities to engage with small and medium-sized enterprises before describing a contract as suitable for SMEs. The requirement would only apply if no SME submits a tender.

Florence Eshalomi: It is a pleasure to serve under your chairship this morning, Mr Efford. Taken together, amendments 20 and 21 would specify that small and medium-sized enterprises should be considered when carrying out preliminary market engagement. These amendments are the first of a number that we have tabled to try to improve the Bill's support for SMEs, and we are pleased to see the progress made on SMEs in the other place. As I mentioned previously, Labour supports the amendments made in the Lords; we want SMEs to have fair access to public procurement, and the amendments would make a positive impact by including SMEs in the procurement system. Baroness Neville-Rolfe's amendments in Committee have added a depth of support for SMEs. I believe the Bill will be a step forward even if those amendments are not accepted, but we should not have a poverty of ambition in this place, which is why we want to go further. The Government talk about improving SMEs' chances when it comes to procurement, but for far too long that has been just talk. We have not seen enough action.

The statistics on SMEs and procurement are truly shocking. Analysis by the Spend Network found that big corporations still win the lion's share—almost 90%—of contracts, worth £30 billion a year, that are deemed suitable for bids from smaller businesses. Research from the British Chambers of Commerce and Tussell found that over £1 in every £5—around 21%—spent by Government on public sector procurement in 2021 was awarded to small and medium-sized enterprises. The British Chambers of Commerce also found that SMEs are now receiving a relatively smaller amount of reported direct Government procurement spending than they were five years ago. As a proportion of the overall procurement budget, direct spend with SMEs by local government bodies was the highest, at 38%. NHS bodies across England spent 22% of their procurement budgets with SMEs, while the figure for central Government was significantly lower than the average—they awarded only 11% to SMEs.

That point was addressed in written evidence to this Committee. Anthony Booth from Bromford Housing Group stated:

"Please note that many SMEs do not have the capacity, IT capability, resource or knowledge to participate in the proposed single supplier onboarding / contract portals. Housing associations do rely on the use of smaller regional and local suppliers and a more effective and simplified process would be welcome to allow them to participate. The use of email trails and traditional spreadsheet analysis for simple tender exercises would support these instances rather than involving complex procurement systems such as precontract. This would encourage the flexibility in the supply chain that the Bill is…designed for and also allow an improved competitive position in order to achieve VFM which is also a core requirement of the bill."

I think we would all agree with that. It is the kind of insight that pre-tender engagement could gather and feed into a more efficient procurement system.

Labour does not feel that SMEs are getting their fair share under this Government, and we believe that we must go further. Our amendments 20 and 21 would address some of the problems that SMEs face. By ensuring that they are engaged during the pre-tender market engagement, our amendments would help to break down some of the barriers that SMEs face in accessing procurement. Early engagement is vital. It can help with efficient contract design, to avoid any bias towards big and established firms that know how the system works. It also means that SMEs will feel more involved in the process and have the confidence they need to bid for programmes.

Kirsty Blackman (Aberdeen North) (SNP): The shadow Minister is making a powerful and well-researched case that builds on the case she made in Committee on Tuesday. I do not want to test the Committee's patience by making a speech on this, but I want to let her know that I am willing to support her amendment should she push it to a vote.

Florence Eshalomi: I thank the hon. Member for her support.

At the moment it is clear that SMEs find the process frustrating and time-consuming. In his written evidence to the Committee, Colin Cram, who set up the conference company Open Forum Events Ltd to run conferences to support the delivery of improved public services, outlined his experience of the procurement system for SMEs. He stated:

"Tendering is expensive and time consuming. The way the UK's public sector operates all too frequently inadvertently discriminates against SMEs, which will include the most innovative of suppliers on which the UK's economy and future global competitiveness will depend. Many SMEs—which means most businesses in the UK—do not know how to tender properly and they don't have the time to do so. According to the Federation of Small Businesses, at the end of 2021 there were 5.5 million SMEs employing fewer than 50 people each. Their average turnover was £1.25 million. However, only half were registered for VAT, so most will have a turnover well below that. Many of these will be capable of delivering contracts greater than the thresholds".

He continued:

"Having to tender for every contract that might interest a small business would prove prohibitively expensive. To illustrate the point, a mid-cap business sought my advice. It was winning just 1 tender in 20 and was thinking of withdrawing from the public sector. I suggested that it should employ 2 full time tenderers. It took my advice, and its win rate went up to 1 in 4—without changing either the products or services that it was providing...To put together the simplest of tenders will cost not less than £1000 if properly costed. So, 4 attempts at tendering for the simplest of contracts would cost £4000 and 20 in order to win at least 1 contract would cost £20,000."

I am pleased that we have made progress on SMEs, but Labour Members fear that, without more clarity and market engagement, SMEs will still be put off by the cost of applying for contracts that they think they have little chance of getting.

SMEs should not have to employ two full-time tenderers to improve their chances of winning contracts that they know they can do. Pre-tender marketing engagement can help to establish contracts that are more easily digested through the bidding process. We understand that some contracts will not be suitable for SMEs, but early engagement can help in figuring out where that is the case and hopefully open up more contracts to a variety of companies. I thank the hon. Member for Aberdeen North for supporting our amendment, and I hope other Members and the Government will support our amendments 20 and 21.

The Parliamentary Secretary, Cabinet Office (Alex Burghart): It is a pleasure to serve under your chairmanship, Mr Efford. Amendments 20 and 21 seek to ensure that preliminary market engagement explicitly refers to SMEs.

I thank the hon. Member for Vauxhall for her support of the changes that Baroness Neville-Rolfe made in the House of Lords. We are all committed to improving options and opportunities for small and medium-sized enterprises to take advantage of the substantial amount of public procurement that exists in this country. We fully agree that preliminary engagement is an important part of that. That is why we have included the new duty to have regard to SME participation in the procurement objectives.

The duty will apply in relation to pre-market engagement just as it will cover the whole of the procurement life cycle. Consequently, we do not consider it necessary to clarify in the pre-market engagement clause that the word "suppliers" captures SMEs. It clearly does, and in view of the broad application of the general duty to support SMEs, there is no need for any drafting changes to be made.

To be clear, the new SME duty will lead contracting authorities to consider not only whether they have engaged with SMEs in their preliminary market engagement, but whether their procurement process and timelines are accessible to smaller businesses, supporting them to win and deliver more public contracts. It is nice to hear the hon. Member for Aberdeen North support small and medium-sized enterprises in England—would that the SNP in Scotland had supported the Bill, giving those same opportunities to SMEs in Scotland. I once again extend my invitation to her and the Government at Holyrood to join us on this journey.

Kirsty Blackman: The Minister keeps talking as if Scotland does not have procurement legislation, and will not have procurement legislation going forward. It is absolutely the case that we will continue to have procurement regulations and rules, and a fairer procurement system—one in which we do things such as mandate the real living wage, for example.

Alex Burghart: The hon. Lady has previously given some good examples of things that are going wrong with current procurement. The SNP has not tabled any reform to procurement in Scotland, and I am afraid that, without reform, Scotland will be stuck with the old regime, whereas from spring next year, small and medium-sized enterprises in England, Wales and Northern Ireland will be taking advantage of the regime set out in the Bill.

Kirsty Blackman: I hope the Minister is not suggesting that when the Scottish Parliament passes procurement legislation, the UK Government will again levy a section 35 order to stop us changing our procurement legislation.

Alex Burghart: Certainly not, because I am sure that there would be no need, whereas it was very clear that there was a need in the case to which the hon. Lady refers. She will know that the Government used that constitutional power reluctantly, but very well advisedly.

Amendment 25 would require contracting authorities that have stated in the tender notice that a contract is suitable for small and medium-sized enterprises to, in the event that no SMEs submit a tender, withdraw that tender notice and engage with small and medium-sized enterprises prior to republishing it, unless they can show that such engagement took place prior to the original publication. The Bill supports—indeed, it actively encourages—buyers to conduct preliminary market engagement. We have gone further than existing regulations:

[Alex Burghart]

clause 17 requires the publication of a preliminary market engagement notice, and clause 12 contains a duty to have regard to reducing barriers facing SMEs. That should lead to increased openness and greater inclusion of SMEs in preliminary market engagement.

However, amendment 25 would add an extra layer of bureaucracy and delay for procurers to manage, and could well frustrate suppliers who have prepared a tender, only for it to be withdrawn if no qualifying bids are received. It is far better for us to increase SME participation in procurement by reducing barriers and highlighting the many benefits they bring to the public sector. I respectfully request that the amendment not be moved.

Florence Eshalomi: The Minister has said that there is no need for amendment 25, but it would cover similar grounds to those that we are discussing and would go further, ensuring that SMEs are given access to suitable tenders. When a contracting authority tags a tender as suitable for SMEs, it is only right that due diligence is carried out to ensure that SMEs have the opportunity to come forward. Unfortunately, tagging a contract as suitable for SMEs does not make it particularly accessible to them: it bears repeating that analysis by the Spend Network found that big corporations still win 90% of contracts, which we know are worth over £30 billion.

"Suitable for SMEs" cannot be another buzzword like "affordable housing"—one that does not mean anything to those SMEs that already say they are struggling to win these tenders. Amendment 25 would help to address that. If a contracting authority thinks that a contract is suitable for SMEs, it should be doing the work to engage those SMEs, ensuring that that contract is truly suitable. Under our amendment, contracting authorities would not have to go through that unnecessary bureaucracy. They will have had to engage with SMEs prior to offering the contract, but if none came forward, that would not hinder the contracting authority's ability to award it. The purpose of the amendment is to help small businesses. Again, I hope the Minister will consider it carefully and support it.

The Chair: Minister, I realise you have given your response, but do you have anything to add?

Alex Burghart: I will just repeat what I said, very briefly. I understand the desire behind the amendment, but we believe that there are sufficient measures for preliminary market engagement for SMEs already in the Bill. In the case described by the hon. Member for Vauxhall, there is a danger that, if no SME came forward, we would be adding unnecessary process and cost to a procuring authority.

11.45 am

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 11]

AYES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	
Evans, Chris	Russell-Moyle, Lloyd

NOES

Bhatti, Saqib	French, Mr Louie
Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Fletcher, Nick	Randall, Tom

Question accordingly negatived.

Amendment proposed: 21, in clause 16, page 12, line 38, after "suppliers" insert

", including among small and medium-sized enterprises,".—*(Florence Eshalomi.)*

This amendment, with Amendment 20, seeks to ensure preliminary engagement explicitly refers to SMEs.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 12]

AYES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	
Evans, Chris	Russell-Moyle, Lloyd

NOES

Bhatti, Saqib	French, Mr Louie
Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Fletcher, Nick	Randall, Tom

Question accordingly negatived.

Amendment proposed: 91, in clause 16, page 13, line 17, at end insert—

"(6) In carrying out preliminary market engagement, a contracting authority must consider potential barriers to participation by small and medium sized enterprises and charities, and take steps to mitigate any barriers identified.".—*(Florence Eshalomi.)*

This amendment, together with Amendment 90, would ensure that the barriers to charities are considered by contracting authorities during the procurement process.

Question put, That the amendment be made.

The Committee divided: Ayes 5, Noes 8.

Division No. 13]

AYES

Blackman, Kirsty	Jones, Gerald
Eshalomi, Florence	
Evans, Chris	Russell-Moyle, Lloyd

NOES

Bhatti, Saqib	French, Mr Louie
Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Fletcher, Nick	Randall, Tom

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to consider clause 17 stand part.

Alex Burghart: Clause 16 covers preliminary market engagement and is followed by clause 17, which includes provisions on related notice requirements. We want to

promote and encourage contracting authorities to conduct preliminary market engagement. The information gathered during this stage can be invaluable for the authority as it clarifies its requirements, assesses the market's capacity and develops its procurement strategy. This is even more important in the new regime, within which contracting authorities are given more flexibility to design their own competitions that are tailored and fit for purpose.

Clause 17 makes provision for contracting authorities to publish a preliminary market engagement notice prior to publishing a tender notice. The purpose of this preliminary market engagement notice is to advertise the fact that the contracting authority intends to conduct or has conducted preliminary market engagement. It is another great example of there being greater transparency and greater opportunities both for suppliers and authorities as a result of this Bill.

Florence Eshalomi: As the Minister outlined, clause 16 gives local authorities the power to undertake pre-market engagement. Although it may be expedient for there not to be pre-market engagement in relation to a number of contracts, particularly small contracts or contracts that are pretty standard for the market, it is entirely sensible for there to be such engagement when an authority is dealing with novel markets or markets where there is innovation. Pre-market engagement can be a powerful tool to help contracting authorities to understand the nature of their contract, what terms are fair in a contract and the nature of the market in relation to a particular piece of work. When it is done correctly, it can also help businesses to get a sense of whether they should put in for particular tenders.

Of course, it is right that any company that receives an unfair advantage in preliminary market engagement is not included in the contract, and we support this addition to the clause. However, I will ask the Minister a couple of questions about this clause that are in a similar vein to the questions I asked during the stand part debate on clause 15.

How often can we expect contracting authorities to undergo preliminary market engagement? As I have said previously, I understand why it is impractical to carry out such engagement on every above-threshold contract. However, it is important that there is some level of consistent practice in the system. In addition, although I also understand the need for flexibility among contracting authorities, I know that businesses want certainty and some certainty can come from knowing that different authorities will follow a similar level of preliminary market engagement as standard.

However, I also have concerns about the burden that this process may place on already stretched procurement departments, a concern I have already raised in earlier debates. The written evidence this Committee received from John Lichnerowicz is telling. He says:

"In my experience Procurement Departments particularly those containing CIPS qualified professionals are extremely overstretched and a bottleneck to public sector organisations being able to deliver their services."

So it is easy to envision that this clause, as well as lacking clear mandates for local authorities to carry out pre-market engagement, will also mean that stretched procurement departments will not have the resources to carry out such engagement.

If pre-market engagement is done proportionally, it could save the taxpayer a small fortune. Will the Minister be issuing clear instructions as to when he intends such engagement to take place?

Many forms of pre-market engagement will involve consideration of contracts that are already being carried out for other contracting authorities. Although every contract will have some bespoke elements, this does not mean that what we learn from one engagement round in one place has no relevance to similar engagement rounds or similar contracts in other places. Will the Minister confirm that information from pre-market engagement will be shareable across contracting authorities and indeed that sharing such data should be relatively common where it is possible to share it?

Regarding subsections (3), (4) and (5) of clause 16, can the Minister say what the threshold for an unfair advantage would be? Of course we cannot have suppliers writing contracts, but engagement will necessarily expose suppliers to some level of information about the planned tender. At what level will such activity be considered to constitute an unfair advantage? Will guidance be issued to decision makers about this matter?

Finally, on clause 17 will the Minister confirm that efforts will be taken to ensure that such notices are received as widely as possible? Again, we all know it is important that small and medium-sized enterprises, charities and social enterprises are made aware of these notices and can then take part in preliminary market engagement if we are to have a true picture of the market. What steps will be taken to ensure that it is not just those who have keen eyes on contracting authorities who engage with them?

Alex Burghart: Let me take the hon. Lady's questions in turn. Effective preliminary market engagement is a great tool to improve procurement. It will improve contracting authorities' ability to act as an intelligent customer—that very much came out in the engagement work we did in the construction of the Bill—because it benefits suppliers, as the potential customer understands the market's capability, is exposed to industry best practice and learns of potential innovative solutions being designed or tested. That will lead to more effective and efficient procurement by reducing the burdens on suppliers during the competition, avoiding the customer considering an unrealistic bid and improving the drafting of contract terms. We will not dictate to authorities when to undertake preliminary market engagement—we think it is better that that is their decision—but we are obviously encouraging them to do so. Of course, as the hon. Lady will know from other discussions we have had, transparency runs throughout the Bill. Sharing the outputs from such engagements will be possible and essentially a great thing.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17 ordered to stand part of the Bill.

Clause 18

Duty to consider lots

Question proposed, That the clause stand part of the Bill.

Alex Burghart: The clause requires the contracting authority, before advertising the opportunity, to consider whether the contract can be split into smaller chunks, or lots. That may be the right thing to do for a number of reasons. It could reduce supply risk by having numerous suppliers, or encourage smaller organisations to bid by making the opportunity more accessible and manageable—for example, breaking a large facilities management contract into regional contracts that local companies can deliver. Because that is important to provide opportunity, particularly for SMEs, clause 18(2) requires contracting authorities to either

"arrange for the award of…contracts by reference to lots"

or

"provide reasons for not doing so."

Florence Eshalomi: As the Minister outlines, the clause obliges authorities to divide larger contracts into smaller lots where that is appropriate for the contract. That is a useful and necessary power, and it is one that we hope SMEs will welcome. Breaking down contracts is a good way of making them more accessible for smaller companies. I mentioned the evidence from John Lichnerowicz, who said that it can be difficult for all but larger suppliers to take on bigger contracts that are not broken down. His written submission states that

"overstretched Procurement Departments would lump requirements into a single large procurement which would go to only the biggest companies in their field who would then have the freedom to pick their favourite sub-contractors effectively eliminating the contribution of equally capable sub-contractors and adding a main contractor's margin into the sub-contractor's costs for little benefit".

Lloyd Russell-Moyle (Brighton, Kemptown) (Lab/Co-op): In a number of contracts awarded recently by my council, the overall contractor ended up subcontracting people who had made separate individual bids but did not have the capacity to take on the bigger contract and therefore were not awarded it on that basis. Having big contracts is just a way of diverting money away from the taxpayer and into shareholders' pockets, is it not?

Florence Eshalomi: I thank my hon. Friend for that valuable point. What we want for SMEs, and what SMEs tell us they want, is fair access to Government contracts—public money that should be going back into local communities up and down the country. Unless we ensure that larger contracts can be broken up into smaller lots and awarded directly to smaller companies, there will be a repeat of what we see with those big contracts. No one wants those same practices to be employed all over the country. I want the Minister to stress what oversight will be put in place to ensure that the important provisions in the clause are carried out and to ensure that all our SMEs truly benefit from public contracts.

12 noon

Alex Burghart: As the hon. Lady will see in clause 18(2), contracting authorities will be required either to arrange by lots or to report on that; they will be required to give a reason, so there will be transparency.

The hon. Member for Brighton, Kemptown characterised money from public contracts as going into shareholders pockets. Obviously, larger contracts are also going to very successful charities. I can think of lots of examples of that in areas where I have lived and areas where I work and live now, so I do not wish to give the impression that is always the case.

Lloyd Russell-Moyle: Even if it were going to these mega-charities, which are huge international organisations and firms, it surely is not right for them to come in and take a contract, and take the top slice off it if the work is still done by small, local organisations. Whether they be for profit or not, local, small organisations should have a chance of just getting the smaller elements of the contract directly, should they not?

Alex Burghart: It is wonderful to hear the hon. Gentleman supporting our Bill once more. Making contracts more accessible to small and medium-sized enterprises is a major purpose of the Bill. It is not always mega, international charities that are getting local contracts. In Essex, I see that is not the case.

Nick Fletcher (Don Valley) (Con): I refer Members to my entry in the Register of Members' Financial Interests, which states that I am an owner-shareholder of an SME. There are other benefits of working for a main contractor, and that should go on the record. The Bill should make it easier for small enterprises to gain that work, but if a contractor works directly for the client, it becomes the main contractor. When it becomes the main contractor, it becomes responsible for the health and safety and everything that goes with it, so there is an awful lot of cover for smaller contractors to work for a main contractor so that the main contractor takes some of those responsibilities away. I know what we are trying to do here and it is a good thing to do. If small and medium-sized enterprises work for the main authority, they become responsible, so there is a cover that main contractors provide. They are not just taking the top slice for nothing; they are actually taking on responsibility for the entire project.

Alex Burghart: My hon. Friend makes an excellent point.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

Award of public contracts following a competitive tendering procedure

Lloyd Russell-Moyle: I beg to move amendment 95, in clause 19, page 14, line 16, at end insert—

"(aa) must disregard any tender from a supplier that does not guarantee the payment of at least the Real Living Wage to all its own employees and contracted staff and those of any sub-contractors;"

This amendment, together with amendments 96 to 99, is designed to ensure that no public contract can be let unless the supplier guarantees the payment of the Real Living Wage to all those involved in the delivery of the contract.

The Chair: With this it will be convenient to discuss the following:

Amendment 96, in clause 41, page 28, line 36, at end insert—

"(3A) A contracting authority may not award a contract under this section to a supplier that does not guarantee the payment of at least the Real Living Wage to all its own employees and contracted staff and those of any sub-contractors."

See explanatory statement to Amendment 95.

Amendment 97, in clause 43, page 30, line 12, at end insert—

"(5A) A contracting authority may not award a contract under subsection (1) to a supplier that does not guarantee the payment of at least the Real Living Wage to all its own employees and contracted staff and those of any sub-contractors."

See explanatory statement to Amendment 95.

Amendment 98, in clause 45, page 31, line 14, at end insert—

"(aa) permit the award of a public contract to a supplier that does not guarantee the payment of at least the Real Living Wage to all its own employees and contracted staff and those of any sub-contractors."

See explanatory statement to Amendment 95.

Amendment 99, in clause 119, page 77, line 41, at end insert—

"'Real Living Wage' means the hourly wage rates for London and for outside London calculated annually by the Resolution Foundation and overseen by the Living Wage Commission (or their successor bodies);"

This amendment inserts a definition of the Real Living Wage for the purposes of Amendments 95 to 98.

Lloyd Russell-Moyle: From July in Scotland, grants will require that the real living wage is paid, and it is already included in procurement rules. That has led to Scotland now having fewer, in percentage terms, workers earning less than the real living wage than in England. We in England and Wales deserve the same. It pushes up wages across the sector. For too long, public authorities have used procurement as a way to undermine salaries and salary rates. It is an ideological viewpoint that the private sector is always best but, in reality, far too often, what "best" means is paying poverty wages. Sometimes innovation from the private sector and the charity and third sector is important, but if it is on the back of paying wages that are below standard, it is not acceptable. That is why I beg to move amendment 95 and linked amendments 96 to 99. Hopefully, they will start to redress the balance.

My hon. Friend the Member for Leeds East (Richard Burgon) asked the Minister's colleague previously about the Government's position on this, and the Government said that they do not believe in dictating employees' wages. The reality is that by not setting a minimum floor—no one is suggesting a maximum—we are undermining good companies that pay good wages. Decent employers can lose out from people playing fast and loose with wages. We have seen numerous scandals, including fire and rehire, TUPE rules not being enforced and collective bargaining being undermined.

Wages below the real living wage require universal credit support. Let me be very clear: if someone is paid below the real living wage, the Government subsidise them. That is, in reality, a subsidy for that piece of work—that procurement. That puts companies whose workers do not receive that subsidy in a worse situation. To create a level playing field, all should receive the real living wage. That would mean that no employees in those companies have to receive a state subsidy for their work. That basic principle—that level playing field—must be enforced in this Bill.

Procurement bodies can incorporate a number of tests relating to the real living wage, but they cannot require that absolutism in contracts. If a company does not fulfil the living wage requirements set out in its procurement tender, but it does fulfil the other requirements, it is required to be offered the contract. That directly undermines the small and medium-sized organisations that work hard to pay the real living wage.

In Brighton, we have a great collaboration between the chamber of commerce, which requires all its members to pay the real living wage, and the trade unions. That kind of collaboration between businesses and unions needs to be supported. People who are not members of a chamber of commerce-registered body should not be able to come in and undermine those contracts.

The Minister might say that this proposal endangers international obligations, or that it means that UK workers are more fairly treated, but because Scotland has already incorporated it, we know it is not a breach of international agreements. It is important to ensure that British workers are respected when British money is being paid out—I should say English and Welsh money, because that is what these rules will be for. We need to ensure they get their just desserts and are not undermined by offshoring with low wages, and companies that are paying their fair share must not be undermined by universal credit subsidies. I commend these amendments to the Committee.

Kirsty Blackman: I congratulate the hon. Member for Brighton, Kemptown on these excellent amendments. I am glad that he mentioned what is happening in Scotland, and I will talk a bit more about that.

It is interesting that the Government say they do not believe in dictating employees' wages, given that they literally set the national minimum wage and they refuse to lift it to the level of the real living wage. They absolutely could lift it to a level people can afford to live on, but they refuse to do so. They chose to change its name, rather than changing the amount and sorting out the significant age discrimination in the national living wage.

The hon. Gentleman is absolutely correct that in Scotland, 91% of people are paid at least the real living wage, which is significantly higher than the minimum wage in the other UK nations. In October 2021, we started to routinely mandate payment of the real living wage in Scottish Government procurement contracts. In 2022 we published updated statutory guidance under the Procurement Reform (Scotland) Act 2014 to reflect the change and the extension of the Fair Work First criteria to include specific reference to provision of flexible working and no use of fire and rehire. We have gone even further than the real living wage; our public money must be spent in a way that requires fair work practices. That is incredibly important because we have the opportunity to spend public money in a way that supports workers and ensures people are best placed to manage the cost of living crisis that we currently face. It ensures that people are fairly paid.

We are not asking for much. Ensuring that people are paid a wage that they can live on and does not need to be subsidised quite so much by universal credit is not a

[Kirsty Blackman]

big thing to ask for. We are asking for dignity and respect for people. We are asking for people to be paid a fair wage and to be treated fairly.

Lloyd Russell-Moyle: There is an alternative to these amendments, which is for the Government to adopt Labour's policy to change the rules of the national minimum wage so that they take into account the cost of living in this country and therefore adopt the standard of the real living wage. I am sure the hon. Lady would support that Labour policy.

Kirsty Blackman: Absolutely. We have for a long time been calling for the UK Government to change their national pretendy living wage to an actual real living wage. We have also asked for the age discrimination to be removed, because it does not cost a 17-year-old with one child any less to run a house than it costs a 32-year-old with one child; people face exactly the same costs. The UK Government are trying to require people to live with their parents, which is exclusionary and discriminatory because not everybody has that option.

The Minister is right to say that the Bill applies in England and Wales and also in reserved functions carried out in relation to Scotland, so there will be some impact on Scottish procurement, or on procurement that affects Scotland or is in Scotland. But I fear that he misunderstands the devolution settlement and the constitution when he suggests that perhaps I, as a Scottish MP from a Scottish constituency, elected to this place that makes laws, should not express an opinion. I was elected to this place in the same way as he was. There are not two tiers of MPs in this place, or so we were told by the Conservative Government when they put through the English votes for English laws rules. There is no two-tier system, so it is appropriate for me to comment on these situations and support amendments, and to consider whether the impact on workers is important. Whether they are in England, Wales or Scotland, it is important.

It is also appropriate for me to consider the Barnett consequentials of any decisions made. For example, if there is a change in the way that procurement legislation works so that more people are paid the real living wage, we might see a situation where procurement ends up with slightly higher costs and universal credit ends up with slightly lower costs, meaning that we end up with more Barnett consequentials for the Scottish Parliament to spend and greater flexibility within our very limited budgets.

If the Minister is going to continue criticising the Scottish Government's and the Scottish Parliament's approach to procurement—he is within his rights to do so—he has no high ground in talking to me if I talk about the England and Wales approach to procurement. I am perfectly entitled to do so. In fact, he has not been elected to the Scottish Parliament, which has power over procurement in Scotland; he has been elected to this Parliament, which does not.

Tom Randall (Gedling) (Con): I completely agree with the hon. Lady that there are not two tiers of Members in this House. She mentioned a 17-year-old. Can she expand on that? I am looking at the Living Wage Foundation website, which states:

"Living Wage accreditation does not require employers to pay the Living Wage to volunteers or apprentices."

What impact, if any, has the introduction of a real living wage as part of the procurement rules in Scotland had on apprentices in Scotland?

12.15 pm

Kirsty Blackman: The hon. Gentleman is absolutely right that there is an issue with that, because the national living wage is set differently for apprentices. He is correct that the Living Wage Foundation's rules on apprenticeships are different. I do not have the figures on whether the wages of our apprentices have risen as a result of the changes that have been made. However, I am sure that the fair work procedures and the rules around that—the inability to fire and rehire, for example—are applicable to apprentices and ensure that they have a higher level of protection than they did previously. In exactly the same way, we have greater requirements with respect to flexible working requests.

Although I cannot give the hon. Gentleman the exact details on figures and wages, I can say that working conditions are, as standard, better as a result. I am sure that many people who were putting procurement contracts out to tender required the real living wage and great working conditions. The amendments would mandate that, so that it is set in stone and everyone is brought up to that minimum standard, although some will well exceed that.

Florence Eshalomi: I thank my hon. Friend the Member for Brighton, Kemptown and the hon. Member for Aberdeen North for their remarks. The amendments are important because so many people are having to take the difficult decision to take strike action as their wages cannot sustain them. We are seeing situations where people are unable to feed their children and heat their properties. People who work in our core public services are relying on food banks. Instead of demonising those people, we as politicians, and the Government, should be looking at how we can help them.

I am proud to be a member of GMB and Unison. We should remember that trade union members are ordinary people. They pay their union subs, yet they are losing a day's pay by going on strike to show the Government that their wages cannot sustain them. People are effectively on poverty wages. During this cost of living crisis, it is important that we listen to their valid concerns.

We see a number of employers still not doing the right thing by recognising the issues that their employees are going through, while still making millions of pounds in profits. As I said in my remarks on amendment 107, Labour is committed to delivering fair treatment for all workers, and that must include fair pay and conditions, workplace wellbeing and the development of workers' skills. We believe that procurement offers a great opportunity to increase social value. Our later amendments will make it clear that we do not want to see those who are breaching the rights of their workers awarded public contracts.

Our ambitions on the minimum wage should not be limited to workers in procurement. Instead, Labour believes we should increase the minimum wage for everyone across the economy. An incoming Labour Government would want to ensure that everyone across

the economy is paid a fair day's wage. We would instruct the Low Pay Commission to factor in living costs when it sets the minimum wage, ensuring that it covers the cost of living.

The cost of living continues to increase for many people and, as inflation continues to rise, their salaries are not keeping pace. These measures would put hundreds of pounds into the pockets of the lowest-paid workers. We would also scrap the low pay category for workers aged 18 and 19.

Alex Burghart: Amendments 95 to 99, tabled by the hon. Member for Leeds East, would place legal requirements on contracting authorities in respect of the Resolution Foundation's real living wage in their procurements. That would ensure that no public contract could be awarded unless the supplier guaranteed the payment of the real living wage to all those involved in the delivery of the contract, including subcontractors.

While the principle behind the amendments is admirable, the Government cannot support them. It is imperative that all contracts are awarded on the basis of the best value for money for the taxpayer and that staff employed on the delivery of public contracts are paid fairly, in line with existing legal requirements. But using procurement rules to compel private sector employers to pay their workers beyond minimum legal requirements would be disproportionate.

The hon. Member for Brighton, Kemptown talked about a floor. There is a floor: for this Government, it is the national minimum wage, or the national living wage for workers over 23. He also mentioned insourcing. Obviously, procuring authorities are completely at liberty to insource if they so wish, and the Bill does nothing to prevent that. If procuring authorities feel that they can get better services, a better deal or better conditions by insourcing, they are entirely at liberty to do so.

I should also let hon. Members know that when constructing a contract, a procuring authority can stipulate pay and conditions as part of that contract. Procuring authorities have big levers at their disposal.

Lloyd Russell-Moyle: Can the Minister give me an assurance that the terms and conditions that procuring authorities can issue can be the sole reason for not awarding a contract, if a supplier does not fulfil that sole clause?

Alex Burghart: I cannot give the hon. Gentleman an absolutely categorical answer, but I can tell him that procuring authorities have it within their power to use that as part of a suite of conditions.

Lloyd Russell-Moyle: I am not quite clear whether the Minister is unable to give me an assurance from his position, or because procuring authorities cannot do so. If he just cannot give me an assurance from his position, I would appreciate his writing to me to confirm whether procuring authorities have the ability to put in a clause that says, "We can disregard contracts that do not fulfil our wages and conditions requirements."

Alex Burghart: I will certainly let the hon. Gentleman know.

The hon. Member for Aberdeen North raised a number of general points; I encourage her to go back and read *Hansard.* I am delighted that she is here; I am delighted that Scottish MPs are in the UK Parliament, and that the Scottish people voted to keep them here at the last referendum. I am very pleased that she is on the Committee and bringing her experience to it.

The hon. Lady will have heard me say in the Westminster Hall debate the other day that I wish the SNP was more involved in the running of the constitution of the United Kingdom. I wish, for example, that it was prepared to take up its seats in the House of Lords, in order to engage with debate there and further the interests of the people of Scotland. Alas, it would seem that the SNP has better things to do.

The hon. Lady said that I have said that she should not be talking about these matters. I really do not mind at all if she talks about these matters, but obviously, some amendments have Barnett consequentials and others do not. As long as she is happy for me to discuss what goes on in Holyrood and in Scotland, I am very happy for her to discuss what goes on in Westminster and in English authorities. I have no problem with that at all.

Returning to the issue at hand, as I say, it remains open to contracting authorities to include conditions or criteria around pay and remuneration in their tenders. Should they feel it is appropriate in the individual circumstances, they can design a procurement around those criteria. I respectfully ask that the amendment be withdrawn.

Lloyd Russell-Moyle: I would have been willing to withdraw the amendment if the Minister had been able to give me a cast-iron guarantee that procuring authorities could reject a contract solely on the basis of a failure to meet a wage level. He has not been able to give me that guarantee—although I welcome that he will be writing to me to confirm the position—so I do want to test the water on amendment 95. I will not move the other amendments.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 8.

Division No. 14]

AYES

Blackman, Kirsty	Russell-Moyle, Lloyd

NOES

Bhatti, Saqib	French, Mr Louie
Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Fletcher, Nick	Randall, Tom

Question accordingly negatived.

Alex Burghart: I beg to move amendment 30, in clause 19, page 14, line 21, at end insert—

"(ba) may disregard any tender that offers a price that the contracting authority considers to be abnormally low for performance of the contract;".

This amendment would allow contracting authorities to disregard tenders offering an abnormally low price.

The Chair: With this it will be convenient to discuss Government amendment 31.

Alex Burghart: We tabled amendments 30 and 31 to ensure that contracting authorities can assess and disregard abnormally low tenders where the supplier cannot demonstrate to the buyer's satisfaction that it will be able to perform the contract for the proposed price. We are committed to delivering value for money and the amendments will provide helpful safeguards against suppliers that seek to undercut the competition with unrealistic tenders.

Florence Eshalomi: While our response to amendments 30 and 31 is lukewarm, we think that they are important. We want all contracting authorities to consider value for money for the taxpayer when making procurement decisions, but there is a substantial risk of accepting below-value tenders for bids. Procurement has to be sustainable, and we know too well the risks when we get that wrong.

When considering the Bill, we must all remember 15 January 2018 and the collapse of Carillion. When it went into liquidation, it employed 42,000 people, including nearly 20,000 people in the UK. It also had a liability of £2 billion to some 30,000 suppliers and subcontractors, some of which sadly fell into insolvency themselves as a result of the collapse. While there are excludable grounds relating to poor procurement practices set out in later clauses of the Bill, I do feel that these amendments provide another check against the reckless behaviour of companies such as Carillion.

In 2018, following the collapse of Carillion, the then Chair of the Public Administration and Constitutional Affairs Committee, the hon. Member for Harwich and North Essex (Sir Bernard Jenkin), said:

"It is staggering that the Government has attempted to push risks that it does not understand onto contractors, and has so misunderstood its costs. It has accepted bids below what it costs to provide the service, so that the contract has had to be renegotiated. The Carillion crisis itself was well-managed, but it could happen again unless lessons are learned about risk and contract management and the strengths and weaknesses of the sector."

Lloyd Russell-Moyle: To some extent, has that not already happened again on the east coast franchise? Twice, unrealistic bids have been accepted and then collapsed, requiring the Government step in. It is not unusual for that to happen, so the amendments are good but probably not strong enough.

Florence Eshalomi: I thank my hon. Friend for highlighting that those lessons do not seem to have been learned.

The hon. Member for Harwich and North Essex went on to say:

"Public trust requires that outsourcing better reflects public service values. The Government must use this moment as an opportunity to learn how to effectively manage its contracts and relationship with the market."

The amendments will not fully solve the problems associated with Carillion, or the problem just mentioned by my hon. Friend the Member for Brighton, Kemptown, and a culture shift in procurement should have taken place following the collapse of Carillion. However, they do provide a safeguard for authorities to use against abnormally low and unsustainable bids.

Finally, will the Minister outline the wider impact of changing "most economically advantageous tender" to "most advantageous tender"?

The Chair: Minister, do you wish to respond?

Alex Burghart: I will respond as part of the clause stand part debate.

Amendment 30 agreed to.

Amendment made: 31, in clause 19, page 14, line 23, at end insert—

"(3A) Before disregarding a tender under subsection (3)(ba) (abnormally low price), a contracting authority must—

(a) notify the supplier that the authority considers the price to be abnormally low, and

(b) give the supplier reasonable opportunity to demonstrate that it will be able to perform the contract for the price offered.

(3B) If the supplier demonstrates to the contracting authority's satisfaction that it will be able to perform the contract for the price offered, the authority may not disregard the tender under subsection (3)(ba) (abnormally low price)."—*(Alex Burghart.)*

This amendment would require contracting authorities to notify suppliers of the fact that the contracting authority considers the price to be abnormally low and give suppliers reasonable opportunity to demonstrate that it is workable before disregarding their tender.

Question proposed, That the clause, as amended, stand part of the Bill.

12.30 pm

Alex Burghart: Clause 19 describes the rules that apply to the award of a public contract following the conclusion of a competitive tendering procedure. Contracting authorities are able to award a contract only to the supplier that submits the "most advantageous tender", which is the tender that satisfies the authority's requirements and best meets the award criteria when assessed in reference to the assessment methodology and the relative importance of the criteria. The clause describes the circumstances that would either require a contracting authority to exclude a supplier or disregard a tender, or give the authority the discretion to do so.

Contracting authorities are required to disregard tenders when the supplier does not satisfy the conditions for participation, and may disregard a tender that materially breaches a procedural requirement. Contracting authorities are also permitted to disregard tenders from suppliers that are not treaty-state suppliers, or when the supplier intends to subcontract the performance of all or part of the contract to a subcontractor that is not from such a country.

The clause also refers to provisions elsewhere in the Bill that allow for contracts to be reserved for supported employment providers, for contracts for particular services to be reserved for public-service mutuals, and for tenders from suppliers that are not members of a dynamic market to be disregarded. It also deals with when suppliers must or may be excluded. I will come to those specific provisions later.

The Government have a moral obligation to spend taxpayers money efficiently. These rules, which provide better flexibility for procurers, will help to ensure that every pound goes further for our communities and our public services.

Florence Eshalomi: The clause contains a small change, which could have significant ramifications, but it is one that we support. Moving from "most economically advantageous tender" to "most advantageous tender" can make a significant difference to the reality of how contracts are awarded. Throughout this process, we have heard of many people who apply for contracts, and have a lot to offer, but fail the most economically advantageous tender test. The new wording gives them a fighting chance at winning contracts.

Charities may also benefit from that. However, the National Council for Voluntary Organisations is cautious about the power of the new term. I hope the Minister is aware of some of the concerns that it raised. It says, in its submission that

"this alone will not have the desired effect. This was already possible under current regulations and guidance, as contracting authorities are meant to account for the wider benefits of any bid, but in reality, it has rarely been applied, with decisions continuing to be dominated by lowest unit costs.

The change in language to assessing for the MAT will not be sufficient to change practice and culture. Further clarity and expectations are needed so that assessing the MAT includes placing more emphasis on the importance of social value and recognising the different ways this can be delivered."

I think it is important to get clarity on how this will be applied. With the right instruction, this new rule can open up how authorities judge applications, but if the Government get it wrong, it could lead to confusion and be little better than the status quo.

It is worth considering the advice from Colin Cram, which I mentioned earlier. He said that it costs £1,000 for all the effort that goes into that tender, so SMEs need to know how much things such as the social value will matter in this new test, and whether it is worth them tendering for contracts. Everyone needs clarity to help them to understand that, and to make economic decisions about how to bid. I would therefore welcome a firm commitment from the Minister and the Government on how we could plan for clarity on that term, and a timetable on how that will be published widely to SMEs.

Alex Burghart: I am very pleased to hear the Opposition's support for this clause and for our significant shift from MEAT to MAT—from most economically advantageous tender to most advantageous tender. That framing sends a very clear signal to contracting authorities to take a broader view, beyond price, of what can be included in the evaluation of tenders—wider social and environmental considerations, for example. We think that the clause will make a significant difference and that, partnered with the national procurement policy statement—NPPS—it will open the way for new thinking about public procurement. I commend it to the Committee.

Question put and agreed to.

Clause 19, as amended, accordingly ordered to stand part of the Bill.

Clause 20

COMPETITIVE TENDERING PROCEDURES

Question proposed, That the clause stand part of the Bill.

Alex Burghart: A key proposal in the Green Paper was simplification of the existing procurement procedures in the public contracts regulations, and clause 20 is the enactment of that proposal. It sets out how competitive tendering procedures should be run. The first option is an "open procedure". That is a single-stage procedure whereby any supplier can submit a tender in response to the tender notice. The second option is a "competitive flexible procedure". That will allow contracting authorities to design the procedure that works best for their procurement, allowing them to engage with suppliers, negotiate, and undertake numerous phases such as for research and development and prototype delivery. Once determined, that procedure will be set out in the tender notice and associated documents.

Florence Eshalomi: This clause is an important one. Again, it relates to the competitive tendering process. Although the mechanisms of these procedures are an incredibly important element of the Bill, many aspects of the procedure are addressed later in the Bill. Those are also referenced in the latter part of this clause. I will cover that later, but I do want to address some aspects of the clause now.

It is welcome that we are seeing a two-stranded procedure system in the Bill. We are aware that some contracts will attract very few bids and are suited to a single-stage tendering process. We are also aware that some tenders will attract many bidders and it is necessary to have a multi-round process to come to a conclusion as to who the best bidder is. Although this provision is welcome, there is discontent from some stakeholders about how the bidding processes will work in practice.

In written evidence, which we all received the other day, Zurich Insurance stated:

"As currently set out, it appears the 'Competitive Flexible Procedure' could be the most suitable approach for the Risk and Insurance services. However, it would be useful if more detail on how each of these procedures will operate could be provided within the Bill."

I therefore have some questions regarding the nature of the multi-round process and how it will work in practice. First, how much effort will be required from contractors at an early stage of the competitive flexible procedure, before putting in a bid? Earlier I referenced and highlighted the evidence from Colin Cram, and we have also heard from him that the cost of putting in a tender can, for some small businesses, be in four figures. For contracts that could attract a large number of bidders—for example, a relatively small contract that can be carried out anywhere—that would mean that many bidders would in effect be entering a really expensive lottery with little chance of winning with their bid. That is particularly off-putting for SMEs, which do not want to spend a significant amount of their budget bidding for these contracts. Mr Cram, who supports the current system of restricted procedure, says that although that system is not perfect, it is much better than what is proposed. He says that the current system

"has a formal and very simple, easily understood and low cost approach to shortlisting businesses/organisations before asking them to tender. Typically, this might result in just 4 being invited to tender. That gives each one a decent, though still expensive, chance of winning."

We all know that the new system will have advantages over the old, restricted procedure, but I hope that the Minister can address some of the concerns and outline how the new system will not be expensive for SMEs.

Alex Burghart: In answer to the hon. Lady's question, the new competitive flexible procedure will allow procurers to design the procurement best to deliver their outcome , rather than being constrained by a rigid and bureaucratic process, which is often the case at the moment. That is good commercial practice.

We plan to provide templates and guidance for contracting authorities to use, so that there is consistency of application without stifling their ability to innovate. That flexibility will benefit suppliers, who will be able to negotiate and offer more innovative solutions. Additionally, when a contracting authority publishes an initial advert, it will have to set out the procedure it intends to run. The contracting authority, in setting out the procedure, will have to ensure that it is proportionate and takes into account the nature, complexity and cost of the contract. The procedure set out will then have to be followed. There is scope to modify the procedure, but that must be in a transparent way and only in so far as it would not have changed the market response.

I feel that we have planning and precautions in place to deal with the concerns expressed by the hon. Lady.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

TENDER NOTICES AND ASSOCIATED TENDER DOCUMENTS

Amendment proposed: 25, in clause 21, page 16, line 29, at end insert—

"(6A) Subject to subsection (6D), subsection (6B) applies where a tender notice or associated tender document indicates that a public contract is suitable for small and medium-sized enterprises.

(6B) If no small or medium-sized enterprise submits a tender, the contracting authority must withdraw the tender notice, and may not republish the tender notice until it has fulfilled the condition in subsection (6C).

(6C) The condition is that the contracting authority has conducted preliminary market engagement (see section 16) with a view to engaging with suppliers who are small and medium-sized enterprises.

(6D) Subsection (6B) does not apply if the contracting authority can demonstrate that it fulfilled the condition in subsection (6C) before the tender notice was published."—*(Florence Eshalomi.)*

This amendment would require contracting authorities to engage with small and medium-sized enterprises before describing a contract as suitable for SMEs. The requirement would only apply if no SME submits a tender.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 8.

Division No. 15]

AYES

Blackman, Kirsty	Evans, Chris
Eshalomi, Florence	Jones, Gerald

NOES

Bhatti, Saqib	French, Mr Louie
Burghart, Alex	Gibson, Peter
Clarke-Smith, Brendan	Marson, Julie
Fletcher, Nick	Randall, Tom

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Alex Burghart: The clause describes the requirement for contracting authorities to publish a tender notice in order to advertise and commence a competitive procedure. A tender notice may act as an invitation to submit a tender for the contract under the open procedure, or an invitation to suppliers to submit a request to participate in a multi-stage tender process under the competitive flexible procedure. In either case it must be published on the central platform, the publishing location for all notices required throughout the procurement cycle.

The central digital platform will contain public sector procurement information, allowing the citizen to understand the authorities' procurement policies and decisions and to see how much money the Government, local authorities and the NHS spend on purchasing essential goods and services, and who is really benefiting from the public purse. Contracting authorities will also be required to provide any relevant associated tender documents, which will provide further details of the procurement. Transparency runs through the Bill like sunlight.

The Bill gives contracting authorities significant freedom to choose a procedure that will best deliver their requirement, but they must set out the process to be followed at the outset. While there is some limited ability to modify those—as we will see in clause 31 —contracting authorities must follow the processes set out in their tender notices or associated tender documents, and failure to do so will leave them at risk of challenge. Further details on the contents of the tender notice and associated tender documents await us in clause 93.

Florence Eshalomi: As the Minister said, the clause pertains to tender notices and all the associated documents. It is crucial to get this right. We cannot just expect measures to be in the Bill—they have to be in there.

The existing Contracts Finder function is the central functioning database for companies to find public contracts that are open for tender. With the Bill, the Government have talked about a new digital platform that will go much further than Contracts Finder, making the finding of contracts even easier. I wish the Government well in that goal, and it is important for a number of reasons.

12.45 pm

We have spoken at great length about the need for SMEs to have easy access to that database and be able to navigate and find those contracts easily. The reality is that some of those very small businesses—often a one-man or one-woman outfit—will not have procurement experts. They will not have time to navigate and understand the database and may miss out on contracts they would be more than able to cover. It is important that we have that transparency. This is taxpayers' money after all and we need to see how it is being spent so, yes, we need that sunlight shining deep on it so that it offers value for money.

Unfortunately, as we all know, we saw big gaps in the transparency and procurement system during the covid-19 pandemic. The National Audit Office investigation into Government procurement during the pandemic found that

"General guidance issued by the Crown Commercial Service recommends that awarding bodies publish basic information about the award of all contracts within 90 days of the award

being made. Of the 1,644 contracts awarded across government up to the end of July 2020 with a contract value above £25,000, 55% had not had their details published by 10 November"

—that is not good enough—

"and 25% were published on Contracts Finder within the 90-day target."

I hope the Minister will accept that that is not acceptable. The Government must ensure that the new system is backed by strong standards to ensure that the publication of contracts on the new digital database is carried out to a good standard. I hope the Minister will outline how that will be done in his response.

Alex Burghart: One of the real advantages of having our online digital platform is that everyone, particularly the very small businesses that do not have much capacity, as the hon. Lady mentioned, will know where to go. Everyone will know where to look, and that will be an enormous convenience for all involved. It will help us to fulfil one of the major functions of the Bill, which is to help new entrants into the system and help fresh suppliers take advantage of the £300 billion pot of public procurement money.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Clause 22

Conditions of participation

Question proposed, That the clause stand part of the Bill.

Alex Burghart: Clause 22 enables contracting authorities to set conditions on suppliers' participation in a procurement process. They are the conditions that a supplier must satisfy to be awarded a public contract. The current regime has often described these as the selection criteria. Conditions of participation must relate only to the legal and financial capacity and the technical ability to fulfil the requirements of the contract. Any conditions of participation set for those purposes must also be proportionate to the nature, complexity and cost of the public contract. That means the conditions should not be unnecessarily onerous for the supplier. A contracting authority can include qualifications, experience or technical ability but, to ensure fair treatment of suppliers and equality of opportunity, they cannot relate to a particular prior award of a public contract or contravene the rules on technical specifications in clause 56.

Florence Eshalomi: Clause 22 gives contracting authorities the power to set conditions of participation for contracts where necessary to get the suppliers to fulfil their full terms of contract. This is an important clause because it allows contracting authorities to put checks and balances in place to ensure that suppliers are fit to carry out the contract. That gives contracting authorities the confidence to engage with novel suppliers, providing a certifiable window into procurement. It ensure that checks can be carried out against the kind of collapse we saw with Carillion. This is a proportionate and necessary measure, so I would welcome assurances from the Minister that the guidance will be provided to contracting authorities on how to impose conditions of participation.

Alex Burghart: I thank the Opposition for their support of the clause. Obviously, we will set out a whole range of guidance around the Bill, but the conditions of participation set out in the clause speak for themselves.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Julie Marson.)*

12.50 pm

Adjourned till this day at Two o'clock.