

Cyflwynwyd yr ymateb i ymgynghoriad y [Pwyllgor Cydraddoldeb a Chyfiawnder Cymdeithasol](#) ar [Y Bil Partneriaeth Gymdeithasol a Chaffael Cyhoeddus \(Cymru\)](#)

This response was submitted to the [Equality and Social Justice Committee](#) consultation on [Social Partnership and Public Procurement \(Wales\) Bill](#)

SPPP 27

Ymateb gan: Tomorrow's Company | Response from: Tomorrow's Company

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inspiring and enabling companies to be a force for good

## **Response to the Consultation by the Equality and Social Justice Committee**

On the

## **Social Partnership and Public Procurement (Wales) Bill**

## 1) Introduction

Tomorrow's Company was founded in 1996 and has worked since then to inspire and enable business to be a force for good in society. Its working method has always been to bring business and key stakeholders together to explore vital issues and develop practical solutions. Its impact has been felt, among other things, in the redefinition of the duties of company directors in Section 172 of the UK's 2006 Companies Act and in the thinking that led, via the Walker Report on the governance of the banks to the creation of the world's first Stewardship Code for Investors in 2010.<sup>1</sup> More recently it has, among other things, been working closely with the British Standards Institution and relevant stakeholders in the development of a systematic response to the challenge of broadening and improving the criteria for the assessment of effective public procurement. Hence BS 95009.

## 2) BS 95009 - The Trust Test

### 2.1 Origins

In 2013 Tomorrow's Company worked with a wide range of businesses to create the report on [Tomorrow's Business Forms](#) - making the right choices of ownership, structure and governance to deliver success for business and society.

This report challenges business owners and boards to ask:

- Does our current business form enable or constrain the purpose and values of our business?
- Does it inspire the workforce to achieve business purpose?
- Does it connect the business to its wider stakeholders?
- Does it incentivise longer-term behaviour?

The report went on to argue that the same awareness of business form is needed by government as policymaker, owner and purchaser. And in that last role, Tomorrow's Company went on to partner the British Standards Institution in taking forward the idea of The Trust Test - a form of 'character due diligence' to which bidders for public sector work would submit themselves. After several years of work with a carefully selected group of stakeholders and experts, BS 95009 was published and is now available to assist companies to demonstrate their trustworthiness to be suppliers or partners to the public sector.

### 2.2 The Need

Suppliers are already expected to show that they comply with a number of specific and specialised policies which may extend from Health and Safety through good employment practices, supply chain issues and Modern Slavery legislation.

Yet there is a fundamental difference between particular parts of an organisation complying with specialist requirements, and the organisation as a whole having a robust

culture which gives the buying organisation some confidence that it can be relied on to behave well in changing circumstances.

In 2017, less than a year before its collapse with severe consequences for so many of its stakeholders and shareholders, Carillion was presented with the Queen's Award for Enterprise that made special reference to its contribution to sustainable development.

What is needed is a rigorous process through which the bidding organisation is able to show in a systemic way that it is upholding its stated intentions through its culture, its governance and its supervision.

Recent highly publicised examples - for example over the procurement of PPE - have further drawn attention to the need for better screening of companies.

### **2.3 The Opportunity Presented by the UK Government's New Procurement Bill**

If there is to be a single digital platform for purchasing it becomes very important that screening goes beyond the ticking of specialist boxes and into a more general understanding of the character and therefore general reliability of companies.

From recent discussions with officials in Whitehall it is becoming clear that the Trust Test is particularly timely in the light of the provisions (in Part Three of the UK Government's new Procurement Bill) for the exclusion of suppliers on ethical and behavioural grounds. Where a supplier has been disqualified, BS95009 provides a recognised and rigorous process by which that supplier can hope to demonstrate that its governance, supervision and risk management arrangements have been strengthened sufficiently to justify readmittance to an approved list.

Equally, the very possibility of exclusion should sharpen the focus of those companies wanting to be on approved lists. Some of these will want to install rigorous processes that minimise the risk of deviation by their own people or their subcontractors and again, BS95009 will be helpful in this context

### **2.4 Parliamentary Discussion of BS 95009**

The potential use for this standard was suggested in a question to the Minister in the House of Lords by Lord Haskel on 5 April this year. The Minister (Baroness Scott) initially appeared to associate the BS 95009 with the imposition of additional red tape. It is in fact exactly the opposite. It is designed to free companies to offer assurance of their trustworthiness without imposing rigid regulation. The standard provides criteria and guidance that enable potential suppliers to demonstrate their generic trustworthiness, transparency, and ethical practice. At the same time, procuring bodies can use the standard to assess bidders more readily and accurately. Overall, the standard should simplify the process, reduce bureaucracy, ensure due diligence, and provide assurance that fairness prevails in the awarding of contracts.

The Leader of the Opposition (Baroness Smith ) [took a more favourable view](#):

*If we look at some of the recent scandals around PPE, we see there is urgency about this. The British Standard ...is not called "the trust standard" without a reason. It is to create trust in public procurement. Is it not time that the Government sought to do something urgently, perhaps adopting this standard for all major government contracts to be sure that there can be trust in public procurement? At the moment, it is sadly lacking.*

### **3) Design, Content and Benefits of BS 95009**

BS 95009 is the first generic, non-sector-specific standard for procurement in the UK public sector.

It is intended to simplify access to the public sector procurement process, including for SMEs. It offers a single framework to provide greater transparency and accountability when contracts are awarded and enables organizations to demonstrate that they can be trusted to behave ethically, deliver without compromising quality or safety, and still offer value for money.

The standard recognises that public sector contracts vary considerably in complexity, value and risk. It does this by applying requirements in a proportionate manner to different types of contracts. As such, SMEs bidding for small, low value projects need to demonstrate trust at a different level to large organizations bidding for complex, long-term infrastructure projects.

It specifies how an organization can demonstrate that it is:

- a) Suitable as an external provider of products and services to the public sector
- b) Able to reliably deliver products and services meeting the requirements of the contracting authority

The requirements are generic and apply to any organization, regardless of type, size, or the nature of its activities.

The criteria set out can be used by organizations which are:

- 1) Contracting out provision of products and services to external providers
- 2) Acting as external providers

## **4) The Opportunity Presented by the Social Partnership and Public Procurement (Wales) Bill**

BS95009 is well designed to support the fulfilment of the following three elements of the new Bill, namely

- a statutory duty on certain public bodies to consider socially responsible public procurement when carrying out procurement, to set objectives in relation to well-being goals, and to publish a procurement strategy
- certain public bodies to carry out contract management duties to ensure that socially responsible outcomes are pursued through supply chains.
- reporting duties to be imposed on the public bodies and Welsh Ministers in relation to the Social Partnership Duty and Procurement duty.

### **4.1) A framework Public Bodies Can Readily Use In Planning Their Approach**

It offers public bodies some practical and readily understandable framework for taking due account of wellbeing, and responsibility. The risk without use of such a framework is that bidding organisations make well-intentioned statements about work, well-being and other aspects of social responsibility without offering evidence that these are underpinned by monitoring, review and supervisory vigilance. The standard is building on the distilled experience of good practice of the best companies which have participated in the work of Tomorrow's Company and the BSI.

### **4.2) A Basis for Tracking the Desired Behaviour Through the Supply Chain**

Section A9 of the Guidance issued with BS 95009 takes the company through a rigorous process of addressing procurement and risks through its own supply chain. By using it public bodies can meet their own contract management obligations in a systematic but not over-bureaucratic way.

### **4.3) A Framework for Reporting by Public Bodies**

Note in particular Section 10 of the standard which deals with performance evaluation. Adherence to the principles set out here offers a basis for demonstrating that both the relevant public bodies involved in procurement, and those involved as suppliers work together to evaluate performance and communicate well with each other.

## 5) Conclusion and Next Steps

Tomorrow's Company has already been inspired by the emphasis placed by the Welsh Government upon the needs of future generations, especially through The Well-being of Future Generations Act. This is consistent with [the principles of stewardship](#) on which Tomorrow's Company has been working with companies, institutional investors, regulators and policymakers over the last two decades.

We see the Social Partnership and Public Procurement (Wales) Bill as a further example of pioneering by the Welsh Government. The legislation is likely to bring benefits to citizens and taxpayers of today as well as tomorrow. As well as helping deliver value in public procurement it should ultimately enhance the quality of decision-making across the private sector, the public sector and the third sector without being unduly bureaucratic or burdensome.

Issues like wellbeing, social value and social responsibility can never be assessed by numbers alone. There is a strong qualitative element and the desired objectives are never achieved unless an organisation has an appropriate culture. The key challenge in qualitative spheres is to find a practical and universal framework for achieving, monitoring and reporting progress. We commend BS 95009 to you as such a framework, embracing as it does the many more thinking through specialist standards and indicators that are already in use. The distinction made in the standard between different levels of criticality, value and risk in contracts is of particular advantage in making public contracts less intimidating to smaller organisations. The standard is designed to ensure that the company or bidding organisation itself taking responsibility for designing and implementing effective processes. This reduces the risk of an unthinking and 'box-ticking' response by bidding companies. The Trust Test makes companies think very hard about their values, and their responsibilities to stakeholders, and how their governance upholds these.

We would be happy to discuss in more detail our own thoughts and ideas derived from our work across all these sectors over the last 25 years.

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<sup>i</sup> From its foundation in 1996 Tomorrow's Company has always operated as a charity with a trading subsidiary. In 2020 the charity known as The Centre for Tomorrow's Company was wound up in a solvent voluntary liquidation and the trustees transferred the ownership of the Tomorrow's Company name to the Telos Foundation, itself a charity with a stated commitment to support the work of Tomorrow's Company.