

PUBLIC SECTOR FOOD PROCUREMENT IN SCOTLAND¹

Background

- *The EU* and the *Office of Government Commerce (OGC)* make clear that public sector bodies are able to pursue sustainable development objectives through procurement where this achieves value for money and is non-discriminatory.
- The three largest parts of the public sector purchasing of food and drink are education (including social work), health and prisons;
- The food supply chain to public bodies is complex and primary producers can supply direct to public sector bodies or indirectly via wholesalers or manufacturers;
- Buyers are required to take account of all aspects of cost, including running and disposal costs, and not just the initial purchase price;
- Buyers can set requirements for delivery frequencies, freshness, taste etc. provided they are reasonable service and quality requirements and provided they are not designed to discriminate against non-local suppliers;
- The case for sustainable food procurement is based around a wider range of environmental, economic and social benefits;
- There is stronger evidence that sustainable food procurement can contribute to the regeneration of rural economies and should encourage the growth of the Small and Medium Sized Enterprises (SMEs) sector and can lead to environmental benefits in the form of reductions in packaging and waste.

¹ <http://www.scotland.gov.uk/Publications/2009/06/25102147/1>

1. Structure of Scottish Public Procurement Food Market 2009²

- Public sector expenditure on food and drink procurement is £129.3 million which represents approximately a third of the total catering and canteens market;
- Around three quarters of total spend is by local authorities (education, social work), health and prisons;
- Local authorities spend 34% on Scottish produce. Scottish produce is particularly predominant for bread, bakery supplies, meat, poultry and fish, milk and dairy in local authorities;
- Smaller suppliers account for 55% of the market for local authorities (compared to 30% for NHS and 11% for prisons);
- Awareness of guidelines on Sustainable Food Procurement is low - with around half of local authorities aware.

Barriers for small-scale Scottish producers:

- For suppliers, there is evidence that barriers exist which mean that small and medium enterprises (SMEs) cannot always compete for contracts on an equal footing. For smaller businesses there is confusion regarding access to tenders and the tendering process itself can be a burden;
- For procurers, there is evidence that Scottish products are often beyond public sector budgets and that there are insufficient quantities of Scottish produce to meet demand. There is also an administrative burden of contracting with smaller suppliers.

2. Policy and Practice³

Key priorities:

- Supporting local and regional economies;
- Resource efficiency (particularly energy use);
- Reducing waste (particularly packaging);
- Improving nutrition.

Scottish Executive – Local Food Source Definition:

- SE defines “local food sourcing” as food both produced and sold within a limited geographical radius but which does not necessarily have any distinctive quality.
- This is to differentiate it from “regional food”, which is defined as food produced within a particular geographical area (whether administrative region, county, town or other appellation) and is marketed as coming from that area. However, it may be sold within or outside that area. Regional food is perceived to have a distinctive quality because of the area in or the method by which it is produced.

² <http://www.scotland.gov.uk/Publications/2009/06/25102147/1>

³ <http://www.scotland.gov.uk/Resource/Doc/1265/0005191.pdf>

Value for Money:

- Value for money, probity and compliance with procurement law remain paramount considerations, but buyers should take advantage of the possibilities for legitimately pursuing a sustainable food policy within this framework.
- Scottish Executive procurement policy requires all procurement of goods and services to be based on value for money, having due regard to propriety and regularity.
- Value for money is defined as “the optimum combination of whole life cost and quality (or fitness for purpose) to meet the customer’s requirement”.
- The emphasis on whole life costs means that buyers are required to take account of all aspects of cost, including running and disposal costs, and not just the initial purchase price.
- This legislation⁴ is designed to ensure that public procurement is fair, transparent and non-discriminatory. This means, for example, that the distance travelled to deliver food, or the locality in which it is produced, cannot be a specific factor in awarding the contract, as this would be discriminatory.

Quality of Service by Supplier:

- On food and catering, for example, buyers can set requirements for delivery frequencies, freshness, taste etc. provided they are reasonable service and quality requirements and provided they are not designed to discriminate against non-local suppliers.

Purchase decision based on wider benefit to society

The EC’s *Interpretive Communication on Environmental Issues in Public Procurement*⁵ confirms that **methods of processing and production** can be included in the technical specifications of the tender where these help to specify the performance characteristics of the product or service. This includes both process and production methods that “physically” affect the end product (e.g. absence of chemicals) and those that do not.

Rationale: The influence of public sector bodies on caterers and via them, producers, can also help to drive up standards generally with wider benefits to society at large. For example, the cost of obesity to the UK economy is estimated at £2 billion and £0.5 billion to the NHS. Any price premium paid for higher standards should however be reasonable and consistent with the need to secure an appropriate balance of cost and quality.

⁴ <http://www.opsi.gov.uk/legislation/scotland/ssi2006/20060001.htm>

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<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/959&format=HTML&aged=1&language=EN&guiLanguage=en>

3. Opportunity to Tender for Local Suppliers

While it is not possible to discriminate in favour of local suppliers, public sector buyers can support local sourcing by considering and removing obstacles to tendering by local suppliers, especially as this may help to achieve value for money. Given the opportunity to tender, local suppliers may have a competitive edge over competitors from further afield as a result of lower overheads e.g. reduced transport costs.

Protected Geographical Indication (PGI):

PGI is an official *European Union* quality standard recognised across Europe. Scotch Beef and Scotch Lamb have a PGI since *June 1996* (EC 1107/96; L148). PGI guarantees that Scotch Lamb and Scotch Beef productions are connected to Scotland.

Protected Designated Origin (PDO):

PDO is a *European Union* quality standard recognised across Europe. In *February 2004*, Scotland had three registered PDO for meat: Orkney Beef, Orkney Lamb and Shetland Lamb. PDO guarantees that the products are produced exclusively in the designated areas.

Removing Obstacles to tendering by local and UK producers⁶:

According to the Scottish Executive it is important to remove unnecessary restrictions that prevent local businesses from competing to supply food – while avoiding giving them preferential treatment that would be in contravention of the procurement rules e.g.:

- Encouraging small local producers/suppliers to collaborate on organising collective responses to demand. Many small producers have the capacity to supply competitively but miss out on large government supply contracts because they are not generally organised to work collectively;
- Making sure that potential suppliers know how to identify and compete for public sector contracts by widely publicising the sort of information available on the SE procurement web site;
- Where purchasing is decentralised (e.g. health trusts and education authorities and schools) structuring contracts in relatively small sizes where consistent with value for money, reducing barriers to local agriculture and horticulture to show how they can meet better requirements.

⁶ <http://www.scotland.gov.uk/about/FCSD/PCSDPOL/00017839/susdevguide.aspx>

4. Advertising Procedures⁷

- According to the *European Court of Justice*, the principles of equal treatment and of non-discrimination imply an obligation of transparency which consists in ensuring, for the benefit of any potential tenderer, a degree of advertising sufficient to enable the market to be opened up for competition;
- The obligation of transparency requires that an undertaking located in another Member State has access to appropriate information regarding the contract before it is awarded, so that, if it so wishes, it would be in a position to express its interest in obtaining that contract;
- It is necessary for the publication of a sufficiently accessible advertisement prior to the award of the contract;
- The greater the interest of the contract to potential bidders from other member states, the wider the coverage should be.

5. Exemptions

- The *Public Procurement Directives* contain specific derogations allowing, under certain conditions, procedures without prior publication of an advertisement. The most important cases concern situations of extreme urgency due to unforeseeable events and contracts which may, for technical or artistic reasons or for reasons connected with the protection of exclusive rights, be executed only by one economic operator.

6. Contract Conditions

- Contracting entities should not impose conditions causing direct or indirect discrimination against potential tenderers in other Member States, such as the requirement that undertakings interested in the contract must be established in the same Member State or region as the contracting entity.

7. Quality Assurance Schemes may Benefit Scottish Produce⁸

- One very positive opportunity for the local food sector in Scotland could be through taking advantage of recent initiatives in public sector food procurement policy. These require that public procurement tender documents should specify that food should be sourced through recognised quality

⁷ http://ec.europa.eu/internal_market/publicprocurement/key-docs_en.htm

⁸ <http://www.scotland.gov.uk/Publications/2005/04/26120207/02107>

assurance schemes that adhere to European standard *EN45011*⁹ which may lead to a significant amount of Scottish food procured.

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⁹ all imports of produce from outside the EC for sale as organic must also be shown to be certified by bodies complying with EN45011 or its international equivalent ISO 65. Importers are therefore to provide evidence showing that such compliance exists.

Defra is not able to authorise any imports involving third country inspection bodies which are unable to demonstrate compliance to EN 45011/ISO 65.