

The Problem with Net Zero

Credible climate commitments in public contracts

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○ Two questions

1. **Is it legal to consider a company's net zero commitments as part of a tender procedure?**
2. **Should it be?**

Note: This is not about the [credibility of net zero commitments](#) (as important as that is). It is about whether are not they are [relevant](#) in the award of public contracts, or [detract from more specific commitments](#).

Answers

1. **Under EU law:** No (due to [the link to the subject-matter requirement](#))
Under UK law: Maybe. PPN 06/21 mandates carbon reduction plans for major contracts. Procurement Bill requires award criteria to [relate to the subject-matter of the contract](#) – no exceptions have (yet) been set out in regulations – may be addressed in Procurement Policy Statements (?)
2. **No**

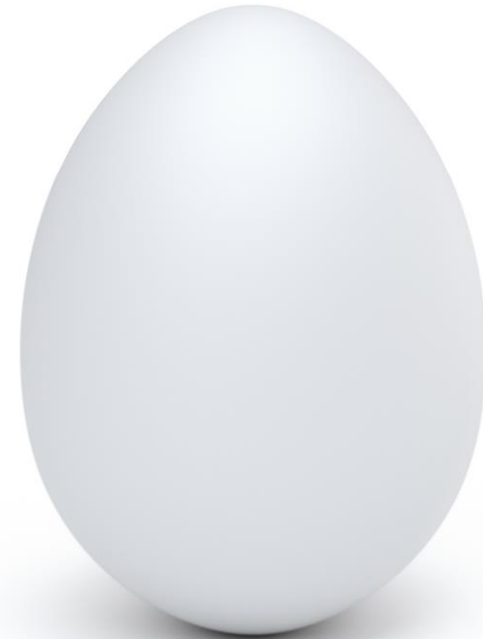




Why?



Vs.



○ Implications

- **Offsets** are also likely to be outside of the link to the subject-matter principle – unless they are part of the goods, services or works being delivered
- **Scope 3** emissions can be taken into account if they are directly linked to the goods, services or works being purchased (life-cycle principle)
- Focusing on the **impacts** of the solution being procured, rather than the **corporate policies** of the contractor, is more likely to encourage **environmental innovation within public contracts**

Example: If a local authority is procuring housing, the focus should be on the life-cycle emissions and other impacts associated with that housing, not the overall emissions of the contractor.



○ An alternative approach

1. What is the **environmental impact** of activities under public contracts? (and are these under the control of Tier 1 contractors?)
2. Do public contracts have the scope to influence that impact? (if government is a small customer, it may still be influential – and if it is a large one, its influence may still be limited)
3. If so, how? (Possible answers: by **influencing the contracted activities**, or by **influencing the companies more broadly**)





PP and other environmental policy instruments

