

Response to the public consultation on “Social Value in Government Procurement”

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By RightsDD

RightsDD is pleased to submit this response to the public consultation on the “social value in government procurement” issued by the Cabinet Office and the Department for Digital, Culture, Media and Sport. We very much support the initiative of the Government to further its commitment towards better and more sustainable procurement. The submission addresses questions 1, 2 and 3 with particular reference to the issue of ‘Safe and Secure Supply Chains’ (high-level theme five). We acknowledge that all identified high-level themes are of great relevance to advance the social impact of bidders but we believe that the proposed metrics fails to give adequate value to the issue of modern slavery in today’s supply chains and the important role that public procurement has in tackling modern slavery.

Question 1: Do you agree with the proposed policy metrics in the model in the attached annex? Do you have examples of such metrics being successfully used in public procurement?

1. We generally support the proposed policy metrics and evaluation model. Taking into consideration the vast buying power of the UK Government, the Government cannot afford to ignore the wider non-financial impact of the projects and/or programmes that it is funding. Public procurement is a powerful tool to shift company behaviour and the Government needs to ensure that public funds do not contribute to business activities with potential negative impacts on the environment or society. We would like to raise the following concerns:

2. The proposed policy metrics are a step in the right direction. However, particularly with regard to mitigating modern slavery risks, we believe that the Government is obliged to adopt stricter measures. The UK Government continues to reaffirm its commitment to tackle modern day slavery in global supply chains. In 2018 the UK (together with the US, Canada, Australia and New Zealand) launched the ‘Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains’ wherein the Government (among other actions) committed itself to “take steps to prevent and address human trafficking in Government procurement practices” and to “encourage the private sector to prevent and address human trafficking in its supply chains”.¹ In a speech on February 25 2019, the British Crime Minister, Victoria Atkins, reconfirmed that the British Government will do everything in its power to eliminate modern slavery.²

The proposed policy metrics do not meet these commitments. Several countries have already adopted further provisions to tackle modern slavery through public procurement and we strongly encourage the UK to make modern slavery due diligence criteria mandatory in

¹ <https://www.gov.uk/government/news/uk-agrees-principles-for-tackling-modern-slavery-in-supply-chains>

² <https://www.gov.uk/government/speeches/crime-minister-addresses-government-work-to-tackle-modern-slavery>

government tenders. Examples of countries that have already adopted stricter measures include:

- a. USA: The US Federal Acquisition Regulation (FAR) requires the government to refrain from awarding a contract unless the company in question can certify that a) it does not sell a product suspected of being produced with forced or child labour or b) that agencies have made every effort to determine whether forced labour has been used in the production of a product.³
- b. Sweden: The County Councils in Sweden are required to apply a human rights code of conduct and contract clauses for products when purchasing products that have been classified as 'high-risk products'.⁴ Contractors selling high-risk products are required to have human rights due diligence processes (including a policy commitment, an internal division of responsibility, a risk analysis and a remediation process) in place to identify and mitigate risks of adverse impacts in the production of the goods/ services. The County Councils monitor compliance through a) contractor self-assessments, b) office-audits, and c) factory audits.⁵
- c. Norway: §5 of the Norwegian public procurement law (§5 LOA) requires public organisations to promote human rights when procuring products with high-risk of human rights abuses in the global supply chains.⁶ The contract performance clauses require suppliers to carry out human rights due diligence as outlined by the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Due Diligence Guidance for Responsible Business Conduct.

Question 2: Do you agree that the proposed minimum 10% weighting for evaluating social value in the bid is appropriate?

3. We believe that a minimum of 10% weighting is too low, particularly taking into consideration that 'procuring authorities will have the freedom to choose which themes and policy outcomes they apply in each procurement'. This policy is specifically inadequate with regard to 'mitigating modern slavery risks'. We generally agree that the procuring authorities should only choose those themes which are relevant to the subject matter of the contract. However, this does not apply to the issue of 'mitigating modern slavery risks' because regardless of the product/service, modern slavery risks always exist and it is only through the implementation of due diligence practices that risks can be reduced. We therefore suggest that a specific weighting (of at least 5%) is given to bidders undertaking efforts to reduce modern slavery risk. We support the suggested evaluation criteria (implementation of relevant policies, staff training, access to grievance mechanisms, mapping supply chains and cooperations with relevant stakeholders) and strongly advise the Government to uphold

³ <https://www.acquisition.gov/sites/default/files/current/far/pdf/FAR.pdf>

⁴ <http://www.hallbarupphandling.se>

⁵ <https://www.hrprocurementlab.org/blog/speaker-statements/swedish-county-councils/>

⁶ <https://lovdata.no/dokument/NL/lov/2016-06-17-73>

these criteria. This is also in line with the Private Members' Bill as proposed by Baroness Young of Hornsey which requires the introduction of mandatory due diligence in government contracts (similar to the US regulation aiming to prevent human trafficking in federal contracts (see 2(a) above more for information).

4. Additionally, we propose that non-compliance with Section 54 of the MSA (e.g. failure to publish a Modern Slavery Statement or publication of a Modern Slavery Statement which fails to fulfil the minimum requirements) should result in exclusion from bidding on Government contracts; this is consistent with a. the interim recommendations made by the Government commissioned Independent Review of the Modern Slavery Act 2015⁷ and b. the Crown Commercial Service's commitment to exclude bidders "unable to demonstrate a fair and responsible approach".⁸

Question 3: Does the proposed approach risk creating any barriers to particular sizes or types of bidders, including SMEs or VCSEs? How might these risks be mitigated?

5. No, we do not believe that the draft policy creates barriers to small or medium-sized companies. Respect for human rights is non-negotiable and needs to be ensured at all times irrespective of a company's size. We would like to draw attention to the UN Guiding Principles on Business and Human Rights (UNGPs) which specifically state that "The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure".⁹ The UNGPs further state that "Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than larger companies, so their respective policies and processes will take on different forms. But some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size."¹⁰ From this, it follows that firstly, all businesses should be obliged to conduct modern slavery (a form of human rights abuse) due diligence and secondly, that award criteria should be able to acknowledge the differences in companies capacities. Hence, companies should not be judged on their level of engagement but whether they have policies and processes in place to tackle modern slavery which are appropriate to their size and circumstances.

Question 4: How can we ensure government's existing procurement policy mandates (for example on levelling the playing field for SMEs) take precedence in designing the procurement?

N/A

⁷"Government should further strengthen its public procurement processes to make sure that non-compliant companies in scope of section 54 are not eligible for public contracts" ([Independent Review of the Modern Slavery Act: second interim report](#) (22 January, 2019), (2.6.4))

⁸ <https://www.crowncommercial.gov.uk/news/read-simon-tses-speech-from-procurex-national>

⁹ https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr_eN.pdf

¹⁰ https://www.ohchr.org/documents/publications/GuidingprinciplesBusinessshr_eN.pdf