

Supplying governments amidst modern slavery provisions in public procurement

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This is an accompanying piece to a Modern Slavery and Human Rights Policy and Evidence Center (Modern Slavery PEC) [Policy Brief](#) on the Effectiveness of public procurement measures in addressing modern slavery. The Modern Slavery PEC is led by the Bingham Center and Dr Sofia Gonzalez de Aguinaga is one of the authors of the Brief. Here she discusses the impact of public procurement modern slavery measures on business.

Businesses are increasingly facing regulations to tackle modern slavery in their supply chains. This year the EU commission published a [proposal for a Directive on Corporate Sustainability due diligence](#) and more recently a [proposal to ban the import of products made with forced labour](#) into the EU. Governments too, as significant buyers of goods, services and works from the private sector, are using their leverage to [prevent and address human trafficking in global supply chains through public procurement measures](#).

Many countries around the world, including the UK, have introduced modern slavery provisions across the procurement cycle into their [procurement laws and policies](#). This means that businesses aiming to supply governments would need to comply with these public procurement measures. In particular, businesses operating in high-risk sectors, as identified by each country, such as ICT, apparel & textiles, health supplies and construction.

Based on a new analysis of existing evidence, this blog discusses the impacts on businesses of public procurement modern slavery measures and of their interaction with existing Mandatory Human Rights and Environmental Due Diligence (mHREDD) and Transparency in Supply Chains (TISC) legislation.

Six ways in which public procurement modern slavery measures can impact businesses:

1. **Exclusion Criteria:** Businesses can be prevented from bidding for a public contract if tainted with modern slavery. In the UK, the [Public Contracts Regulations 2015](#) includes a mandatory exclusion of suppliers convicted for modern slavery. Mandatory exclusions can also apply to subcontractors such as in [Finland](#) and [Austria](#).
2. **Debarment:** Businesses can be temporarily suspended for a specific period, removed from a "preferred supplier" or equivalent list, or banned for an indefinite period. In the US, the [Federal Acquisitions Regulation](#) (FAR) allows for debarment when officers find human trafficking violations. In the UK, the [Procurement Bill](#) aims to create a 'debarment register' accessible to all public sector organisations. Whilst exclusion grounds in the [EU](#) and debarment mechanisms in the [US](#) have not been used extensively yet, they set clear expectations of business behaviour.

In Germany, between 2013 and 2015, and following inspections, the authorities in Bremen imposed penalties for non-compliance with labour clauses to several suppliers including exclusion from public tenders for a period of 6 to 15 months ([Jaehrling et al. 2018](#))

3. **Selection Criteria:** Businesses can be asked to meet mandatory minimum requirements related to modern slavery to be

eligible for a procurement. In the [UK](#) this can be included as technical specifications.

To be eligible to supply rubber gloves to the Region Stockholm, suppliers are requested to report on migrant workers in factories and to disclose policies related to forced labour and no recruitment fees ([The Danish Institute for Human Rights, 2020](#))

4. **Award criteria:** Businesses that comply with social award criteria specific to modern slavery can be rewarded by the government. Depending on the weighting, social criteria can have a significant influence on the award of a contract. These criteria have also been applied beyond Tier 1 suppliers.

In Finland, the national-level central purchasing body Hansel, gives points to suppliers that pay a living wage and that limit total working hours, including overtime, to no more than 48 hours per week on average ([OECD, 2020](#)).

5. **Contract Performance Clauses:** Businesses can be required to undertake certain steps in relation to labour standards for the duration of the contract.

In Norway, the municipality of Skien has established a set of collective contractual requirements applicable to 'high-risk' sectors, such as construction, called the Skien Model, which establishes a maximum of one level of subcontracting under the main supplier to promote decent work and labour rights ([European Commission, 2020](#)).

In some cases, contract clauses apply beyond Tier 1 suppliers.

In Denmark, Copenhagen has implemented and monitored contract performance clauses focused on fair pay and labour conditions in all service and construction public contracts for contractors and subcontractors ([European Commission, 2020](#)) introducing chain liability clauses ([Jaehrling et al. 2018](#)).

6. **Contract termination:** Businesses can face financial penalties, termination of the contract, or debarment if these clauses are breached and when other efforts from public bodies, such as working with suppliers, have been ineffective as recommended by the [UN Guiding Principles on Business and Human Rights](#) (UNGPs).

[In the Netherlands](#), if a supplier does not comply with social conditions in the contract, including modern slavery, fines can be imposed. If, after notice of default, the contractor still does not comply with social conditions in the contract, the agreement can be terminated.

Implications of legislative interactions for businesses:

1. **Businesses could be excluded from public procurement if they do not comply with mHREDD:**

- According to the [European Commission](#), when a company that is bidding for a public contract falls within the French or Dutch mHREDD laws but has not complied with its due diligence obligations, it can be excluded from public procurement by EU law.
- In [Germany](#), companies fined for more than €175,000 for non-compliance with the German Due Diligence Act, once the enforcement mechanism comes into force in 2023, could be subject to exclusion from public procurement.
- In [Austria](#), a proposed Supply Chain Law would introduce penalties and sanctions to companies for violations of human rights due diligence obligations including exclusion from public procurement processes for up to 3 years.

2. **Businesses could be excluded from public procurement if they do not comply with TISC:**

- In the UK, a business can be excluded, [at the discretion of public buyers](#), from bidding for a public contract if, whilst falling under the TISC regulations of the Modern Slavery Act 2015 has not submitted a modern slavery statement.
- In [Western Australia](#), suppliers can be prevented from seeking or being awarded public contracts for up to 2 years for non-

compliance with the reporting requirements of the Modern Slavery Act 2018.

As discussed, modern slavery public procurement measures have important implications for businesses that aim to supply to governments across the world. To comply with these, businesses need to be able to disclose data on specific modern slavery risks or working conditions and show evidence of the measures they have taken to address modern slavery in their business and supply chains. This might be more difficult for SMEs to achieve as they often face resource constraints, putting them at a disadvantage vis-à-vis large businesses to participate and win a public tender. Finally, if businesses want to supply to governments, they have to comply with their human rights due diligence and transparency legal obligations

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