



HUMAN RIGHTS REQUIREMENTS

IN GOVERNMENT PROCUREMENT: RISING EXPECTATIONS AND PROACTIVE RESPONSES

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In a new Procurement Policy Note issued by the Cabinet Office, ministers have set out measures to help public procurement officials understand the level of modern slavery risk posed by suppliers to the UK Government.

The latest in a series of actions taken by the Government to scrutinise its own supply chains in light of the Modern Slavery Act 2015, the new measures include a guidance document, a training programme and an online supplier risk assessment tool.

They are designed for staff working on both existing contracts and new procurement

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activity and will apply to all central government departments, executive agencies and non-departmental public bodies from the 1st of October this year.

The guidance document, *Tackling Modern Slavery in Government Supply Chains*, is aimed at procurement and commercial practitioners operating at all levels of the UK Government. However, it contains some key information with which some key suppliers, as well as government staff, will need to be familiar.

New tender response questions

Procurement documentation is likely to be amended with more specific tender response questions on the issues of modern slavery and human trafficking.

The questions posed to would-be government suppliers will cover:

- The working and employment practices of staff assigned to the contract, especially the supplier's approach to modern slavery and human rights abuse



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- The recruitment methods used for staff delivering the contract
- The conditions in factories used to produce goods to be delivered under the contract, including wages, working hours and rest breaks
- How subcontractors within the supplier’s own procurement system will be ‘managed and monitored’ for modern slavery risks
- What action plans have been developed for tackling any existing modern slavery risks

According to the Guidance, the intended consequence of these new tender response questions is that companies hoping to bid for government contracts will undertake deeper human rights analysis of their own activities and the activities of their subcontractors before they do so.

These questions will not be a ‘tick-box’ exercise but are designed to help bidders demonstrate ‘a positive and proactive approach to ensuring that their staff are subject to fair work practices, receive fair pay and have opportunities to develop skills’.

Companies whose responses are satisfactory will achieve a higher score against the associated award criterion as part of the procurement process.

New contract conditions

Government procurement staff are also being advised to include specific terms and conditions, to strengthen their protections, in contracts deemed ‘high risk’ on the basis of the industry, business model or commodities in question.

Contract conditions suggested for higher risk suppliers include:

- A requirement to provide information demonstrating the company’s approach to modern slavery and human trafficking
- A right for the buyer to request and approve action plans for the remediation of any modern slavery issues identified
- A duty to report regularly on due diligence processes for subcontractors and to collaborate fully with government buyers on their own risk assessment and due diligence processes

The contract conditions imposed will be commensurate with the size and complexity of the affected supplier. They will then be monitored as part of a

continuous contract management programme for modern slavery issues.

This contract management programme could include: supplier meetings to discuss the additional material being provided; key performance indicators for staff training, incident response times and incident handling; and audits for higher risk suppliers.

The online tool

Government suppliers may also be asked to complete the Modern Slavery Assessment Tool. The tool acts as an online portal for information about the systems, processes and procedures the supplier has in place to identify and address modern slavery risks.

Developed by the Home Office, it is designed as an automated way for public bodies to assess their own supply base for modern slavery risks. The supplier is asked questions about the processes they have in place and recommendations are generated automatically, demonstrating how the supplier can improve their anti-slavery processes.

Risks identified as part of this process will also be addressed using the broader contract management provisions discussed above.

The training

Commercial and procurement officials working across government will receive training on these new initiatives and on the broader issue of how to identify and report on modern slavery risks in the Government’s supply chain.

What happens next?

Reading through the new Procurement Policy Note and the associated guidance for government officials,

what predominates is a desire for heightened awareness of modern slavery issues throughout the procurement process – from Whitehall to the factory floor.

Ministers are targeting not just those risks which can be identified on production sites, through subcontractor audits for example, but also those risks which can be identified at a much earlier stage, through comprehensive training of procurement staff on the basic questions to ask in their interactions with potential suppliers.

All of these efforts, along with the development of various government supplier codes of conduct covered in previous *In-Procurement* articles, will feed into the Government's own Modern Slavery Statement to be published in December this year. From 2021 onwards, individual government departments will begin publishing their own Modern Slavery Statements and the competition for best practice within government is likely to increase.

In order to stay ahead of these rising expectations, suppliers and would-be

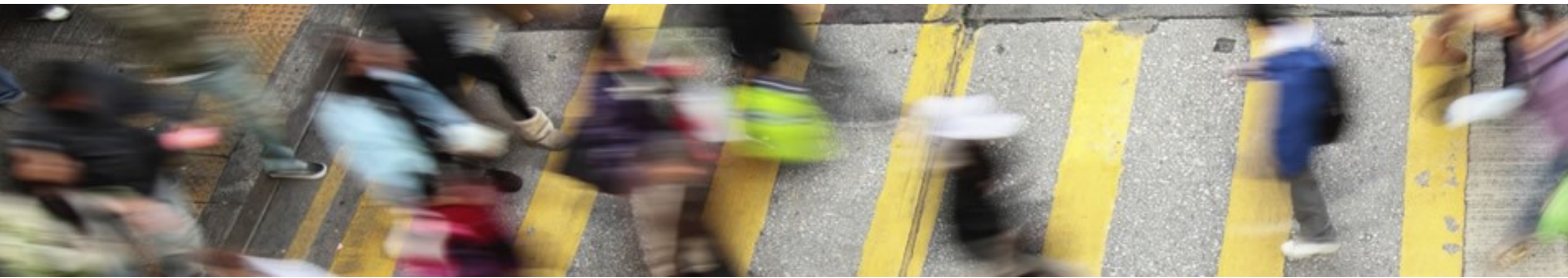
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suppliers to the Government will need to take a proactive approach.

Rather than waiting to be asked, suppliers should begin mapping out their risks, through closer scrutiny of their recruitment processes, their employment practices and their relationships with subcontractors. Any risks identified should be documented along with the associated mitigation measures and action plans for their implementation.

We are already working with clients to help identify their salient human rights risks and put appropriate mitigation measures in place. We have also been conducting human rights assessments for companies using our framework of best practice in this area.

The greater the level of transparency which supplier companies can demonstrate through this kind of preliminary self-assessment, the better their chances of surviving and succeeding as partners of a public procurement system whose awareness, and standards, in the area of modern slavery and human rights are on the rise.



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