

## The Implications of the Modern Slavery Act in Public Sector Tendering

Modern slavery, which includes forced labour and human trafficking, is unfortunately still a significant concern in today's society. The International Labour Organisation estimates that around 14,000 people are victims of modern slavery in the UK alone.

The Modern Slavery Act 2015 (**Act**) commercial organisations that carry on a business or part of a business in the UK; supply goods or services; and have an annual turnover of £36 million or more, to prepare a slavery and human trafficking statement each financial year, setting out, inter alia, the steps they have taken to ensure that slavery and human trafficking is not taking place within their own business or supply chains.

The public sector plays a significant part in tackling this issue, due to public bodies' obligation, when carrying out certain procurement exercises, to apply the mandatory exclusion ground contained in Regulation 57(1)(l)(1a) of the Public Contracts Regulations 2015 (as amended). This exclusion ground requires that, where a contracting authority has established or is aware that the bidding entity has been convicted of an offence under Section 2 or 4 of the Act (i.e. human trafficking), it must be automatically excluded from the procurement process.

As well as applying the standard mandatory exclusion ground referred to above, the Crown Commercial Service's standard Selection Questionnaire (**SQ**) (which should be used by public authorities in England and Wales) includes a specific question addressing modern slavery. This pass/fail question asks the bidder to confirm whether the organisation is required under the Act to prepare a slavery and human trafficking statement and, if so, to confirm that the organisation is compliant with the annual reporting requirements.

Compliance with the requirements of the Act are coming under increased scrutiny by the Home Office who, in October 2018, sent letters to over 17,000 companies who have not published annual statements, requiring them to do so or to face being publically named. The Government also hosted an international conference on tackling modern slavery in procurement in London on 27 March 2019. At the conference, the Government launched a free Modern Slavery Assessment Tool, which will be available across the UK public sector to help public sector organisations identify and address modern slavery risks in their supply chains. The tool will provide a tailored report, based on an online questionnaire, which indicates the risks of modern slavery being present in their supply chains and providing recommendations to reduce those risks.

Given the current spotlight on modern slavery, it is therefore important that bidders tendering for public sector contracts are aware of their obligations and ensure they are complying with the requirements of the Act or risk facing issues in public sector procurement processes.

Whilst there is currently no legal obligation to go over and above the legislative requirements, given the approach that has been taken in England and Wales, public sector purchasers in Northern Ireland may also want to consider whether to include provisions in the selection stage of their procurement processes that are similar to those contained in the SQ, to ensure the businesses they are contracting with are compliant with their modern slavery obligations.

For further information, please contact a member of our Procurement team.