

GPA and Trade Bill

Submission to Public Procurement ETAG

Introduction

This submission is written on behalf of the trade union members of the Expert Trade Advisory Group on public procurement, including the TUC, GMB, Unite and Unison. The purpose of the submission is to inform the Government's proposed changes to legislation, through the forthcoming Trade Bill, to implement obligations arising from its independent accession to the General Agreement on Procurement (GPA).

The GPA is an international agreement that aims to liberalise and increase access to member states' public procurement markets, that the UK previously participated in through its membership of the EU.

Principles governing public procurement

Any member state's public procurement regulations – whether derived from international commitments such as the GPA or through domestic legislation – should adhere to 3 key principles

- The right to organise and deliver quality public services in the public interest, free from mandatory marketisation and outsourcing.
- The strategic use of public procurement to support jobs, training and apprenticeships and economic development at a national, regional or local level.
- The use of social value procurement to promote good work – including fair pay and collective agreements, high quality employment, equality, environmental and other social standards.

The GPA is a regressive step – our concerns

The TUC has concerns around provisions within the GPA that relate to the key principles above that are more limited than current measures included within the EU Procurement Directive 2014, transposed into the UK domestic law through the Public Contract Regulations 2015 that we believe are a minimum requirement. These fall in to two main areas as follows:

- The definition of most advantageous tender set out in Article X paragraph 9 of the GPA does not include reference to a price/quality ratio that includes qualitative, environmental and/or social aspects as currently set out in Section 67(1) to (3) of the Public Contract Regulations 2015 – this should be a minimum requirement.
- Section 56(2) of the Public Contracts Regulations reflects Article 18.2 of the EU Directive which place an obligation on member states to ensure that when performing public contracts, contractors comply fully with applicable environmental law and with social and labour standards set out in EU and national law and in collective agreements, as well as those safeguarded by international treaties and conventions, including ILO conventions 87 and 98. This is not only a requirement placed on contractors but also forms grounds for the exclusion of bidders, sub-contractors and abnormally low tenders within current UK regulations. Yet no such conditions exist within the GPA.

It is therefore imperative that provision is made within the Trade Bill to enable contracting authorities in the UK to include the wider definitions of social value and price/quality ratio as well as the obligations set out in respect to social, environmental, labour law and

collective agreements and conventions within their tender specifications, contract evaluation and award criteria.

These criteria should be incorporated, as a minimum requirement, into the regulations that replace the Public Contract Regulations when they expire in December 2020. Ensuring that the UK has a robust and dynamic set of national procurement regulations that put people and places first should be the key priority of the Government. We should not accede to the GPA unless it can be confirmed that this is compatible with the kind of regulatory requirements and principles set out above.

In defence of high quality public services, the government should also use the schedule of commitments set out in Appendix 1 to specifically exclude areas of public services, both the exclusion of specific bodies in Annexes 1 and 2 and through the exclusion of specific services, e.g. health and social care, from Annex 5. The process for determining which bodies and services are excluded should be open to consultation with all stakeholders.

Developing a progressive trade and procurement framework

Trade unions have long-held concerns about the policy and practice of public procurement and outsourcing in the UK. In many cases, the liberalisation of public services and public procurement has led to damaging price-based competition that has led to a race to the bottom on pay and employment standards, dysfunctional fragmentation of supply chains and the off-shoring of large parts of our productive capacity.

The Covid-19 pandemic has brought this into sharp focus. Years of unfettered marketisation and outsourcing has led to a precarious, two-tier public service workforce, with key workers bearing the brunt and over-extended and fragile supply chains threatening our national security and safety, exemplified by the stark failures in providing PPE for our key workers with tragic consequences.

We believe that the UK has a window of opportunity to develop a robust, dynamic and progressive trade and procurement policy that supports people and places. This should be reflected in domestic legislation, including the devolved procurement powers of each devolved legislature, and form the basis for any potential involvement in international trade and procurement agreements, the key elements of which should include:

- strengthening social value criteria in support of good work, fair pay, equality, trade union recognition and collective agreements
- strategic use of public procurement in support of employment, training and apprenticeships and support for local economic development and inclusive growth
- enforcement of criteria through both domestic and international supply chains, incorporating joint and several liability
- promotion of the fundamental right of public bodies to deliver quality public services in the public interest, including through in-house services
- standards for digitisation and artificial intelligence in support of national security, civil liberties, workers' rights and employment standards