

Promoting Decent Work Through Public Procurement



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Foreword

“Decent work” is at the heart of the Sustainable Development Goals (SDGs), specifically SDG 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. The Covid-19 pandemic caused the deepest global recession in decades, reducing global GDP by 3.1 per cent in 2020. A crisis profoundly impacted decent work globally, exacerbating existing inequalities and creating new challenges. Today, only 5 per cent of the world’s population lives in a country that is on track to return to or surpass pre-COVID projections of economic output.

This highlights the urgent need for reforms and the importance of utilizing all available policy instruments at our disposal, including public procurement to ensure adequate work conditions.

At UNOPS, public procurement is a powerful agent that creates decent work for all, promoting social inclusion, fairness, and value for money. With over 25 years of experience across the globe, including in fragile contexts, we have demonstrated that it is possible to harness procurement efforts to drive economic, social, and environmental impact through sustainable practices.

As part of the UN development system, UNOPS recognizes the growing importance of measuring the success of its activities through its contributions to the SDGs and the Common Agenda. UNOPS’ contribution lies in leveraging the processes it implements to influence project outcomes and the behavior of its partners.

This practical report seeks to raise awareness among governments, procurement practitioners, and other stakeholders involved in public procurement about the significant role it can play in promoting decent work throughout the supply chain. It also outlines how this can be achieved, illustrating how considerations for decent work can be effectively integrated into procurement policies and processes. We want to help harness the power of the public purse to deliver quality jobs along with social protection and respect for rights at work to achieve sustainable, inclusive economic growth and eliminate poverty.



Anne-Claire Howard

Director, Procurement Group

Foreword

In an era where global supply chains are increasingly complex and interconnected, the role of public procurement in promoting decent work has never been more critical. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) underscores the importance of enterprises, regardless of size, in contributing to economic and social progress. Public procurement, with its immense purchasing power, stands as a pivotal lever in this endeavour.

This publication aims to demonstrate the significant impact that public procurement can have in fostering decent work conditions across supply chains. By integrating criteria for decent work into procurement policies and processes, governments and procurement practitioners can ensure that millions of jobs created through public investment meet fair and equitable standards.

The International Labour Organization's (ILO) Labour Clauses (Public Contracts) Convention, 1949 (No. 94), serves as a foundational framework, emphasizing the need for fair wages, reasonable working hours, and safe working conditions. Despite its longstanding existence, the Convention remains underutilized, highlighting the need for renewed commitment and action.

This document provides advice for integrating decent work considerations into public procurement. It offers practical measures and contract clauses that can be adapted to various procurement contexts, ensuring that public contracts not only deliver value for money but also uphold the dignity and rights of workers.

As we strive towards achieving Sustainable Development Goal 8, which calls for inclusive and sustainable economic growth, full and productive employment, and decent work for all, this publication is a call to action for all stakeholders to harness the power of public procurement in building a fairer, more inclusive global economy.



Vanja Ostojevic

Chief Procurement Bureau ILO

Introduction

The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)¹ encourages all enterprises, both multinational and others, regardless of their size, to make positive contributions to economic and social progress and the realization of decent work for all and to minimize and resolve the difficulties to which their various operations may give rise.

As the biggest customer in the world, with a purchasing power of an estimated \$ 9.5 trillion every year, which in many developing countries represents approximately 15-22 per cent of the GDP², public procurement is a significant leverage point to promote decent work in their supply chains. This highlights the role of the public sector in stimulating good corporate behaviour.

To illustrate the impact of public procurement, consider this: 1 per cent of the global GDP allocated to public investment spending in key infrastructure – electricity, roads, schools, hospitals, and water and sanitation – can generate over seven million jobs worldwide through direct employment effects alone³. This is just one example from a single sector, but in addition to infrastructure, the public sector procures a wide variety of goods and services. All those millions of jobs must provide decent working conditions.

Public procurement plays a crucial role in ensuring that such criteria are integrated into the procurement documents and that appropriate clauses are included and monitored in contracts.

Purpose of the publication and target audience

This publication aims to raise awareness among governments, procurement practitioners, and other stakeholders involved in public procurement about the significant role it can play in promoting decent work throughout the supply chain and to outline how this can be achieved.

The publication aims to provide various practitioners and actors within the public sector with a starting point to:

- Build their understanding of the concept of decent work and its relationship with public procurement.
- Identify measures that can be implemented across the procurement cycle to promote decent work in the supply chain within the context of public procurement.

The specific criteria and contract clauses pertaining to decent work will vary depending on the procurement subject matter, as well as the labour laws and public procurement framework of each country. This paper does not aim to provide a comprehensive guide to all decent work criteria and related contract clauses; rather, its purpose is to illustrate how considerations for decent work can be effectively integrated into procurement policies and processes.

1. International Labour Organization, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)*, Sixth edition, ILO, Geneva, 2022.

2. World Bank, 'Procurement for development', World Bank, 14 April 2020, <www.worldbank.org/en/topic/procurement-for-development#1>, accessed 15 May 2024.

3. Moszoro, Marian, '*The Direct Employment Impact of Public Investment*', IMF Working Paper No. 2021/131, International Monetary Fund, 6 May 2021.

Decent work and public procurement

The International Labour Organization's (ILO) Labour Clauses (Public Contracts) Convention, 1949 (No. 94), in force since 1952, covers aspects such as wages (including allowances), hours of work and other working conditions, as well as the health, safety and welfare of workers engaged in the execution of public contracts. Convention No. 94's corresponding recommendation (Recommendation No. 84) provides further guidance on the possible contents of the labour clauses to be included in public contracts. Although the Convention entered into force in 1952, the ILO's Committee of Experts on the Application of Conventions and Recommendations highlighted in its 2008 General Survey that Convention No. 94 has been an "underused instrument" and considered "the objectives of the Convention to be even more valid today than they were 60 years ago."⁴

More specifically, Convention No. 94 requires the insertion of clauses into public contracts to (a) ensure that workers are entitled to wages, hours of work and other labour conditions at least on a par with those normally observed for the kind of work in question in the area where the contract is executed, and (b) also ensure that higher local standards, if any, are applied.⁵

Sustainable Development Goal (SDG) 8 of the 2030 Agenda emphasizes the need to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all to build a better future for all people. Decent work involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for all, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men.⁶

It has been challenging to make progress towards achieving SDG 8, and the world is far from reaching most of the targets.⁷ In order to achieve decent work for all women and men, reforms in line with international labour standards are needed to tackle the serious threats recent crises have placed on the global economy. Public procurement should lead by example by being a conscious consumer. Also as important, public procurement must ensure that the public sector is not getting a "good price" at the expense of wages and working conditions of the workers employed to carry out public contracts, even beyond national borders, particularly when considering that price usually has a significant weight when evaluating bids.

4. International Labour Office, *Report III (Part 1B): General Survey concerning the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84)*, International Labour Organization, Geneva, 2008.

5. International Labour Office, *Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84): A practical guide*, International Labour Organization, Geneva, 2008.

6. International Labour Organization, 'Decent work', <www.ilo.org/topics/decent-work>, accessed 15 May 2024

7. United Nations Department of Economic and Social Affairs Sustainable Development, 'Goal 8 Progress and Info', <https://sdgs.un.org/goals/goal8#progress_and_info>, accessed 10 May 2024.

How to promote decent work in public contracts

In some countries, suppliers are required to produce a certificate attesting to their compliance with tax, social security and labour laws and regulations in force. While this type of certificate can serve as a filter and offer evidence of the suppliers' record, including their respect for social obligations, it is not enough to guarantee that decent working conditions will be observed in the execution of the public contract.

Decent work is composed of ten substantive elements (see Table 1)⁸. The following table lists and further explains measures that public procurement actors can take to have an impact on those elements.⁹

8. International Labour Organization, 'Decent work indicators', www.ilo.org/resource/decent-work-indicators.

9. Gender equality cuts across the decent work agenda, so the corresponding indicators are to be disaggregated by sex and, as appropriate, by age group, education and ethnicity.

Table 1. Contribution of public procurement to the promotion of decent work.

Public procurement measures to promote decent work	Elements of decent work										
	Employment opportunities	Recruitment	Adequate earnings and productive work	Decent working time	Combining work, family and personal life	Work that should be abolished	Stability and security of work	Equal opportunity and treatment in employment	Safe work environment	Social security	Social dialogue, employers' and workers' representation
1. Support for SMEs ↗											
2. Implementation of supplier code of conduct ↗											
3. Promotion of employment opportunities for disadvantaged groups ↗											
4. Enforcement of labour and social security obligations ↗											
5. Enforcement of health and safety regulations ↗											
6. Support enforcement of minimum wages ↗											
7. Maintain appropriate duration of working days ↗											
8. Support prevention of child labour, forced labour and human trafficking ↗											
9. Support prevention of discrimination ↗											
10. Provide access to training ↗											
11. Monitor during contract management ↗											

As previously mentioned, the specific criteria and contract clauses pertaining to decent work will vary depending on the procurement subject matter, as well as each country’s labour laws and public procurement framework. Also important to consider is that Article 2 (3) of the C094 – Labour Clauses (Public Contracts) Convention specifies that “the terms of the clauses to be included in contracts and any variations thereof shall be determined by the competent authority, in the manner considered most appropriate to the national conditions, after consultation with the organizations of employers and workers concerned, where such exist”. The next subsections illustrate how considerations for decent work can be effectively integrated into public procurement.

Support for small and medium-sized enterprises

As defined in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)¹⁰, all enterprises, multinational or others, regardless of their size, are expected to address their actual and potential adverse impacts that relate to internationally recognized human rights, understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work.

In the particular case of small and medium-sized enterprises (SMEs), they globally contribute to two thirds of all jobs and are the primary source of new job creation.¹¹ They play a crucial role in achieving productive employment and decent work. Public procurement can support the participation of SMEs¹² by implementing different policies (see Table 2).

10. ILO, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration)*, Sixth edition, ILO, Geneva, 2022.

11. International Labour Organization, ‘Micro, Small and Medium Enterprises’, <www.ilo.org/topics/micro-small-and-medium-enterprises>, accessed 15 April 2024.

12. For guidance on supporting women-owned businesses, refer to the UNOPS publication on gender-responsive public procurement for recommendations: United Nations Office for Project Services, *Gender-responsive Public Procurement*, UNOPS, 2023.

Table 2. Public procurement policies to support participation of SMEs

	Potential for market distortion			
	Less intrusive —————> More intrusive			
	None	Low	Medium	Maximum
Range of policies	<ul style="list-style-type: none"> Streamlining procurement process Eliminating unduly restrictive requirements (incl. financial ones) E-procurement Value for money, rather than emphasis on price Multiple sourcing and unbundling procurement packages 	<ul style="list-style-type: none"> Supplier development programmes (technical assistance, training) 	<ul style="list-style-type: none"> Financial assistance Subcontracting programmes (voluntary or mandatory) 	<ul style="list-style-type: none"> Price preferences Set-asides and local content
Objective	<ul style="list-style-type: none"> Deregulate Improve transparency Improve competition (as SMEs can compete more effectively for smaller contracts) 	<ul style="list-style-type: none"> Support SMEs, Women-owned businesses, or other groups of interest, to improve performance and/or capabilities 	<ul style="list-style-type: none"> Alleviate significant constraints faced by SMEs Increase the participation level of SMEs in public and private markets 	<ul style="list-style-type: none"> Targeted assistance in procurement Limit competition to SMEs, women-owned businesses or other groups of interest Increase the input of local labour, goods and services ('local content')

Source: *Adapted from Asian Development Bank, SME Development: Government Procurement and Inclusive Growth, ADB, November 2012.*

As part of UNOPS supplier development efforts, a Supplier Resource Centre¹³ has been deployed to build the capacity of personnel and provide a reference point where SMEs can access resources on tendering processes and sustainability. The platform contains an array of resources including free online courses, information about upcoming events and a form to provide feedback or request training.

Box 1. UNOPS Possibilities programme

UNOPS supports the development of diverse micro, small and medium-sized enterprises, including in developing countries, by giving them knowledge and insights to help their businesses in pursuit of contracts (with UNOPS and others).

The UNOPS Possibilities (UP) programme helps strengthen its capacity to bid in public procurement tenders while expanding and diversifying the UNOPS supplier base. Targeted outreach and needs assessment surveys help identify challenges local suppliers face when participating in UNOPS tenders. Participants receive information and resources related to international procurement processes tailored to their needs and local context, including but not limited to topics such as eTendering, ethics, conflict of interest and sustainability – knowledge that is vital to be more competitive when bidding for tenders.

For example, in 2022, UNOPS organized three UP Forums with a workshop modality in Mozambique, the Democratic Republic of the Congo and Kenya. Between the three workshops, there were over 429 participants, with 253 companies newly registered on the United Nations Global Marketplace (UNGM). In Mozambique, the workshop was organized in response to our partner's request to strengthen and diversify the local supplier base. The online gathering aimed to build the capacity of local suppliers in agriculture, fisheries, transportation and more, so they could participate in UNOPS tenders. Among the 157 attendees, 16 suppliers were subsequently awarded tenders. Of those, one identified as women-owned.

13. United Nations Office for Project Services, 'Supplier Resource Centre', <www.unops.org/business-opportunities/supplier-resource-centre>.



Myanmar UNOPS Possibilities (UP) Forum 2018 © UNOPS

Implementation of supplier code of conduct

A supplier code of conduct sets expectations for the public sector's suppliers in areas such as labour, human rights, environment and ethical conduct (see for reference the UN Supplier Code of Conduct)¹⁴. How to assess suppliers' compliance with the code, and what to do with such information, will depend on the availability of resources and the respective legal framework.

The public sector, distinct from the private sector, requires appropriate legal frameworks in addition to policies because they, unlike businesses, must justify their public spending in accordance with public procurement laws. Therefore, they do not have as much scope for action as businesses when it comes to due diligence. In particular, they are limited if actions like due diligence are not well established in the law as part of their procurement obligations¹⁵. That said, assessment methods can include a combination of audits, self-assessments and documentation reviews.

Box 2. UNOPS DRiVe programme

UNOPS developed the Delivering Responsibility in Vendor Engagement (DRiVE) programme in 2018. DRiVE is a data-driven supplier sustainability programme designed for UNOPS suppliers to ensure that they operate responsibly and in accordance with high standards of integrity, in line with the United Nations Supplier Code of Conduct. It serves as a risk management tool for the UNOPS supply chain, enabling greater visibility of suppliers and their activities. DRiVE assesses supplier sustainability across ten different areas, including human rights, labour standards, equal opportunity, ethical conduct, climate, environmental protection, health and safety, and systems and policies.

UNOPS embraces the principle of continuous improvement, ensuring that suppliers can improve their performance through a four-step process:



DRiVE's continuous improvement model, based on data collection, assessment, action and impact.

- **Data collection**

Data is collected from suppliers during the tender process through the DRiVE questionnaire, supplemented by relevant data on different industries, markets and local contexts.

- **Assessment**

The data is assessed to identify suppliers and industries to engage with, following a risk-based approach.

- **Action**

A Corrective Action & Preventive Action (CAPA) plan is issued to suppliers, including corrective actions that can be voluntarily implemented.

- **Impact**

When a supplier has completed their corrective actions, we can track the kind of impacts we have had with them.

14. United Nations, UN Supplier Code of Conduct, Rev. 06, UN, December 2017.

15. Treviño Lozano, Laura, '*Due diligence - a standard of conduct for contracting authorities and business contractors*', SAPIENS Working Paper, Sustainability and Procurement in International, European, and National Systems Network, July 2024.

Under DRiVE in 2022:

- A total of 3,053 bidders were subject to sustainability screening.
- Of the suppliers awarded via eSourcing, 55 per cent were screened for supplier sustainability. UNOPS intends to increase this percentage during the strategic plan.
- Fourteen suppliers, which had received CAPA plans from UNOPS, made voluntary improvements in 45 different areas. This entailed the development of strategies and action plans related to gender, diversity and inclusion, new parental leave policies for employees, as well as procedures and training in health and safety. In terms of impact, approximately 5,240 employees benefit from these improved workplace policies and procedures.
- The different sections of DRiVE are deliberately related to the expectations that are not only within the UN Supplier Code of Conduct but also align with international good practices and norms. In the context of decent work, the labour section of DRiVE is not only rooted in the ILO Declaration on Fundamental Principles and Rights at Work,¹⁶ 1998, amended in 2022,¹⁷ and the 11 fundamental instruments (10 conventions and 1 protocol)¹⁸, but also recognizes good business practices.

Box 3. ILO Helpdesk for Business on International Labour Standards

ILO has established a business helpdesk offering information about various labour-related topics, all encompassed within the Multinational Enterprises and Social Policy (MNE Declaration). This resource is available to assist companies, as well as workers' and employers' organizations, in conducting due diligence in accordance with the provisions outlined in the MNE Declaration.

While it does not offer information specifically regarding national labour laws or industrial relations practices, it serves as a valuable resource for companies seeking to prepare themselves for the implementation of supplier codes of conduct.

For more information, visit the [ILO Helpdesk for Business on International Labour Standards](#).

16. International Labour Organization, 'Fundamental Principles and Rights at Work Branch', <www.ilo.org/about-ilo/how-ilo-works/ilo-organizational-structure/governance-and-tripartism-department-governance/fundamental-principles-and-rights-work-branch-fundamentals>.

17. International Labour Organization, *ILC.110/Resolution I. Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work*, International Labour Organization, 10 June 2022.

18. International Labour Organization, 'Conventions', <<https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO:::>>.

Promotion of employment opportunities for disadvantaged groups

Depending on the procurement subject matter and the corresponding market study, public procurement processes can support the promotion of employment opportunities for disadvantaged groups, such as youth, ethnic minorities, and persons with disabilities, among others.

Public procurement frameworks can allow the right to reserve participation in public procurement processes (or lots) for social businesses that support the social and professional integration or reintegration of disadvantaged groups, including persons with disabilities.¹⁹ Another option is to require a certain percentage of the people delivering a contract to be from a particular disadvantaged group.



Members of Los Topos receive training certificates in Argentina © UNOPS/John Rae

19. See for instance Article 20 of the Directive 2014/24/EU on public procurement: European Union, [Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC](#), Official Journal of the European Union, 26 February 2014.

Box 4. A chance for change

In Barrio Curita, in the municipality of General San Martín, Argentina, an unlikely group of men and women helped connect 450 homes to water services. Lack of access to water is an all too common issue in low-income neighbourhoods.

Made up of a group of socially excluded men and women, Los Topos provides job opportunities in the infrastructure sector to community members who have had past conflicts with the law.

Established in 2017, the Los Topos Ltda. Work Cooperative has worked with the UNOPS social infrastructure programme for around three years. With funding from the government of Argentina, the cooperative carries out community infrastructure tasks.

Members of Los Topos were trained by Agua y Saneamientos Argentinos S.A. – the government water service provider – to make intra-household water connections, and they created a system to continue teaching the trade to new members. Additionally, UNOPS helped to further strengthen Los Topos' project management skills.

By providing jobs and training, the social infrastructure programme helps not only improve the infrastructure of homes in low-income neighbourhoods but also enables a cultural shift that reduces the likelihood of engaging in illegal activities.

[Read more on the UNOPS website](#)

The United Nations Disability Inclusion Strategy (UNDIS)²⁰ provides the foundation for sustainable and transformative progress in disability inclusion across all pillars of the United Nations' work: peace and security, human rights, and development. In line with this, UNOPS has drafted supplier diversity guidelines to help ensure inclusive public procurement.

20. United Nations, [United Nations Disability Inclusion Strategy](#), UN.

Enforcement of labour and social security obligations

The contract should include clauses related to the unavoidable duty of the contracting companies to comply with labour and social security obligations strictly, as well as to ensure compliance by the subcontracted companies. Non-compliance should be considered a breach of contract.

As labour laws are not static and are particularly of relevance for contracts lasting extended periods, clauses regarding the contractor's responsibility to comply with all the relevant current labour laws applicable to the contractor's personnel should be included in the contract, mentioning that they may be amended from time to time. This includes laws relating to employment, health, safety, welfare, immigration and emigration, the ILO Declaration on Fundamental Principles and Rights at Work, and the 11 Fundamental ILO Instruments (10 conventions and one protocol), whichever has the highest standards.

Though part of labour laws, recruitment practices can be considered and included as a separate topic. Suppliers' recruitment practices nationally and across borders should be grounded in quality labour standards, protecting all workers' rights, including fundamental principles and rights at work, and preventing human trafficking and forced labour. This type of commitment can be included in the supplier code of conduct, and its observance should be part of the contract.

As an example, the Swedish Regions and Adda Central Purchasing Body published a guidance document to support procurers in conducting procurement with a focus on due diligence, meeting procurement requirements, and ultimately fulfilling the contract according to these terms. The contract terms require suppliers to have policies and processes in place to identify, prevent, mitigate and remedy adverse impacts on people, the environment and society in their own operations and in the supply chain.

The guidance also helps suppliers fulfil these contractual obligations.²¹

Enforcement of health and safety regulations

Though the clause related to compliance with labour laws is established in the contract, it is important to detail the most significant ones related to health, safety, social and environmental (HSSE) issues, particularly for labour-intensive activities

(e.g., construction, cleaning services, private security), during which work would be delivered at a place provided by the procuring entity. Therefore, HSSE breaches can be detected during contract management (e.g., during an inspection).

Where appropriate provisions relating to the health, safety, and welfare of workers engaged in contract execution are not already applicable by virtue of national laws or regulations, collective agreement, or arbitration award, public procurement shall take adequate measures to ensure fair and reasonable conditions of health, safety, and welfare for the workers concerned. It should be noted that the measures taken should aim to prevent occupational injuries or diseases in compliance with Convention Nos. 155 and 187 (ILO fundamental conventions).



A UNOPS engineer shows plans to a construction worker at Merdarë crossing point © UNOPS/Elise Laker

Box 5. UNOPS Goal Zero – Striving to achieve zero injuries, zero illnesses

We are committed to ensuring that the people who work for and with the organization do not fall sick or sustain injuries as a result of carrying out their duties. UNOPS has a zero-tolerance approach to unsafe work environments as we strive to deliver the highest quality work for our partners and the communities we support – safely and sustainably.

21. Hållbar Upphandling, 'Guidance to the contract terms', <www.xn--hllbarupphandling-8qb.se/en/services-4>, accessed 21 May 2024.

Support enforcement of standards for minimum wages

As established in Article 2 of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94)²², contracts should state that the contractor shall pay rates of wages and observe conditions of labour in accordance with relevant laws and the requirements of any relevant authority, and such wages and conditions of labour shall not be lower than those minimum standards established for the trade or industry wherein the works are being carried out.

If no established rates or conditions are applicable, the contractor shall pay rates of wages and observe conditions which are not lower than the general level of living wages²³ and conditions observed locally by employers whose trade or industry is similar. The living wage was defined in a recent ILO Meeting of Experts²⁴, endorsed by the ILO's Governing Body in March 2024, during which it was described as:

- the wage level that is necessary to afford a decent standard of living for workers and their families, taking into account the country's circumstances and calculated for the work performed during the regular hours of work;
- calculated in accordance with the ILO principles for estimating the living wage;
- to be achieved through the wage-setting process in line with ILO principles for wage setting.

Public procurement regulations should stipulate that the procuring entity reserves the right to reject a submission if it determines that the price, when considered alongside other components of the submission, is unusually low concerning the procurement's subject matter. Such a low price may raise concerns about the submitting supplier or contractor's capacity to fulfil the procurement contract.²⁵ This assessment should also factor in prevailing working conditions at the project location.

For example, Costa Rican procurement regulations specify that bidders must provide a detailed breakdown of the price structure encompassing all relevant elements,

including personnel details (such as the number and type of personnel²⁶ assigned to the contract). This requirement is obligatory for service and public works contracts and any other contractual object as stipulated in the tender documents²⁷. The information gathered serves multiple purposes, including assessing whether the personnel budget adheres to the minimum wage decree. Bids indicating wages below the minimum or failing to cover associated social security obligations must be disqualified. Furthermore, this data enables the negotiation of contract amount adjustments in case the minimum wage increases.

A specific case of this obligation, consistent with the 'level playing field' objectives of public procurement, can be found in the 2024 law case from Ireland, *White Mountain Quarries Limited (t/a Breedon) v Mayo County Council*.²⁸ It reminds contracting authorities of the need to identify and investigate suspicion of abnormally low tender amounts. The winning bidder had incorporated 'people' rates below the industry standard in the figures transposed into the Schedule of Costs Components, which informed the price criteria when scoring the tenders. The claimant asserted those labour costs did not, in isolation, meet minimum wage requirements. The court ruled in favour of the claimant. As labour rates were below industry standard, "albeit offset by other rates, the recipe for the blend is tainted and the obligation arose to perform an inquiry". The court set aside the award decision.

In cases where breaches related to decent work can be detected during contract management, it is important to establish provisions for payment breaches. For instance, in UNOPS contracts for major works²⁹, Sub-Clauses 6.2 (b) and (c) specify that:

"The Parties agree that if the Employer or the Engineer becomes aware that the Contractor has failed to pay the Contractor's Personnel in accordance with Sub-Clause 6.2 (a), the Engineer may request the Contractor to provide, within seventy-two (72) hours of such request, evidence of all payments made to the Contractor's Personnel. If the evidence is found unsatisfactory, the Engineer shall give the Contractor Notice seventy-two (72) hours before the Employer intends to pay the Contractor's Personnel. The Employer may, in its absolute discretion, pay those Contractor's Personnel the

22. International Labour Organization, 'C094 – Labour Clauses (Public Contracts) Convention, 1949 (No. 94)', <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312239>, accessed 1 April 2024.

23. It is worth noting that Article 2 of Convention No. 94 does not refer to the concept of living wages but to minimum wage.

24. International Labour Organization, Report of the Meeting of Experts on wage policies, including living wages, GB.350/POL/1, 350th Session of the Governing Body, Geneva, 9-23 February 2024

25. Article 20 of United Nations, *UNCITRAL Model Law on Public Procurement*, UN, New York, January 2014.

26. As minimum wage varies according to one's professional degree.

27. Article 26 of the Costa Rican regulation on public procurement: Sistema Costarricense de Información Jurídica, *Reglamento a la Ley de Contratación Administrativa*, N° 33411, Procuraduría General de la República de Costa Rica (2006).

28. The Courts Service of Ireland, *White Mountain Quarries Limited (t/a Breedon) v Mayo County Council*, [2024] IEHC 259, 2024.

29. UNOPS construction contracts use elements of Conditions of Contract for Construction 2nd edition (2017 Red Book) and 1st edition (1999 Red Book) published by the International Federation of Consulting Engineers (FIDIC). FIDIC contracts are adopted by a number of multilateral banks, such as the World Bank. See: International Federation of Consulting Engineers, 'World Bank renews agreement to use FIDIC standard contracts for a further five years', FIDIC, 30 October 2023, <<https://fidic.org/node/42052>>.

amount the Engineer determines is or may be, owing to the staff and labour, and the Employer may recover any such amount paid as a debt due from the Contractor to the Employer subject to Sub-Clause 20.2 [Employer's Claims]."

Maintain appropriate duration of working days

Article 4(b) of the C094 – Labour Clauses (Public Contracts) Convention specifies that the laws, regulations or other instruments giving effect to the provisions of the Convention shall, except where other arrangements are operating to ensure effective enforcement, provide for the maintenance of adequate records of the time worked by, and the wages paid to, the workers concerned.

In the case of construction and relevant services to which the article could also apply, it should be established that no work shall be carried out at the site on locally recognized days of rest or public holidays, or outside the defined working hours, including possible exceptions such as when the work is unavoidable or necessary for the protection of life or property or for the safety of the works. This requirement is also important to include in contract clauses related to arrangements that allow the supplier's personnel to take breaks during working hours³⁰ in accordance with applicable laws and industry best practices.

When defining working hours and days as specifications for services (e.g., cleaning services, private security), the public entity should be mindful of the applicable laws so as not to demand services from suppliers that do not comply with regulations.

30. See Article 2 of Convention No. 94, which refers to hours of work: International Labour Organization, 'C094 – Labour Clauses (Public Contracts) Convention, 1949 (No. 94)' <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C094>.

Support the prevention of child labour, forced labour and human trafficking

Governments should engage businesses, social partners and civil society in strengthening public procurement, raising awareness and building the capacity of public officials regarding integrating standards against child labour, forced labour and human trafficking³¹ in procurement processes.³²

A total of 28 million people were trapped in forced labour on any given day in 2021.³³ As forced labour continues to be a grave and persistent problem,³⁴ public procurement must not make any use of any form of forced or compulsory labour.³⁵ Assessment for modern slavery within the supply chain should be integrated into due diligence processes, or the issue should be examined separately. For example, tools like the Modern Slavery Assessment Tool,³⁶ which was developed in the United Kingdom, aim to assist the public sector in enhancing worker protections, minimizing the risk of exploitation in supply chains and identifying the potential risk of modern slavery associated with procured goods and services.

31. See ILO conventions, for instance with regard to child labour: International Labour Organization, 'C138 – Minimum Age Convention, 1973 (No. 138)', <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182>.

32. International Labour Organization, Organisation for Economic Co-operation and Development, International Organization for Migration, and United Nations Children's Fund, *Ending child labour, forced labour and human trafficking in global supply chains*, ILO, OECD, IOM and UNICEF, 2019.

33. International Labour Organization, *Profits and poverty: The economics of forced labour*, Second edition, International Labour Office, Geneva, 2024.

34. United Nations Human Rights Office of the High Commissioner, 'Special Rapporteur on contemporary forms of slavery', <www.ohchr.org/en/special-procedures/sr-slavery>, accessed 15 May 2024.

35. See ILO instruments on forced labour (Convention Nos. 29 and 105, and the 2014 Protocol).

36. GOV.UK, 'Modern Slavery Assessment Tool', <<https://supplierregistration.cabinetoffice.gov.uk/msat>>.

Box 6. Combating human trafficking and forced labour in UN supply chains

In 2019, the High-Level Committee on Management Procurement Network established a dedicated Task Force with the objective of developing and coordinating a comprehensive and coherent approach to combating human trafficking and forced labour in UN supply chains through the procurement operations of the Procurement Network members.

The Task Force has developed a Policy Framework (statement) that lays the foundation for this work and that will support future efforts targeting major suppliers. Also, in 2024 it launched an e-learning course for UN staff based on the Policy Framework. The course provides staff with an introduction to preventing and combating human trafficking and forced labour in United Nations supply chains through a series of five modules. The modules will answer the following key questions:

- Why is it important to address human trafficking and forced labour in UN supply chains?
- What is human trafficking and forced labour?
- What are the due diligence requirements to manage this risk in UN supply chains?
- How can we use this knowledge in procurement processes?
- What are the cross-cutting considerations relevant to addressing this risk in a UN context?

Read the High-Level Committee on Management Procurement Network Statement on Combatting Human Trafficking and Forced Labour in UN Supply Chains and the guidance [here](#).

Regarding child labour, an example of a specific measure is to include a clause in the contract requiring that the contractor represents and warrants that neither it nor the contractor's personnel nor any of the contractor's subsidiaries or affiliates (if any) are engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous, to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Support prevention of discrimination

The contract should include a clause stating that as per the ILO Declaration on Fundamental Principles and Rights at Work and its underpinning conventions on the elimination of discrimination regarding employment and occupation, no discrimination between men and women shall be made in the employment of the contractor's personnel.³⁷

The tender documents should not include discriminatory criteria regarding the supplier's personnel. Examples of such criteria include gender- or age-related requirements for workers being assigned to the contract; stating that the supplier shall not include personnel with disabilities and/or with HIV/AIDS; demanding pregnancy tests, or other criteria based on a person's race, sex, religion, nationality, ethnic origin, sexual orientation, disability status, age, language, social origin or other status.

37. International Labour Organization, 'C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111)', accessed 13 May 2024.

Provide access to training

If, as part of the procurement subject matter, personnel with certain training is required, the tender could include the provision of training for the supplier's personnel as part of the contract. This would allow people without such training to be assigned to the contract and receive training because of it, therefore giving them specific skills required for vocational or technical jobs through the implementation of a public contract.



Vital infrastructure improvements and better roads throughout South Sudan help drive sustainable development. © UNOPS/John Rae

Box 7. Roads to food security in South Sudan

To improve food security, as well as to support trade and market development, UNOPS constructed feeder roads – secondary roads designed to funnel traffic to major roads – using almost €44 million in funding from the European Union.

As part of the project, UNOPS built more than 170 kilometres and maintained more than 300 kilometres of feeder roads in Warrap State, Lakes State, Northern Bahr el Ghazal State and Western Bahr el Ghazal State in South Sudan. Four markets and five water, hygiene and sanitation systems were also built.

To ensure the benefits of the feeder roads are felt far into the future, UNOPS also trained South Sudanese state engineers so that they will be prepared to take over the maintenance of the feeder roads.

“UNOPS works alongside communities and institutions to ensure the transfer of skills and knowledge needed to sustainably maintain this infrastructure,” says Peter Mutoyedzanwa, former UNOPS Country Director and Representative in South Sudan.

Members of the community from local villages worked on the roads together. This gave young people, in particular, the opportunity to learn the skills needed to work as drivers, construction equipment operators, masons and surveyors.

[Read more on the UNOPS website](#)

Monitor during contract management

Article 4(a) of the C094 – Labour Clauses (Public Contracts) Convention specifies that the laws, regulations, or other instruments giving effect to the provisions of the Convention shall:

1. be brought to the notice of all persons concerned;
2. define the persons responsible for compliance therewith; and
3. require the posting of notices in conspicuous places at the establishments and workplaces concerned with a view to informing the workers of their conditions of work.

The contract should clearly outline the contractor's responsibility to inform its personnel about the procedures and standards they must adhere to.

As mentioned before, ways to assess the suppliers' compliance with a code of conduct will depend on the availability of resources. However, in the case of labour-intensive activities, such as services and works (e.g., construction, cleaning services, private security), breaches related to decent work conditions could be detected during contract management (e.g., during inspections of works).

In some countries and contexts, a government labour and industry department regulates matters related to safety at worksites and other related labour aspects. Usually, their inspectors have significant power to stop work, ban operators and the like. The contractor must comply with all laws and must comply with instructions issued by these inspectors. However, contract managers should not rely only on such inspections and should enforce contractual obligations, including those related to decent working conditions, during the implementation of the project.

Guidance should be provided to contract managers on the main obligations and authority of the parties involved in enforcing decent work-related requirements. The guidance should present the different approaches that can be taken towards managing issues such as record keeping and maintaining documentation, personnel and subcontractor management, as well as preventing site practices that lead to breaches.

Remedies for non-observance of the provisions of labour clauses

The contract must incorporate appropriate measures to be taken in the event of non-compliance. For instance, it should stipulate the issuance of Improvement Notices (or Notices to Correct, as necessary) to the contractor, delineating responsibilities and deadlines for implementing corrective actions. The contractor will bear these measures, as specified in the procurement documents. They encompass the authority to suspend all or part of the works for the duration of the contractor's breach, especially where health and safety obligations are concerned until the requisite corrective actions are taken. Additionally, the contract should include provisions for termination if the contractor fails to comply with issued notices. It is imperative to extend these provisions to subcontractors, particularly in the context of construction.

In instances where the contractor's personnel are not paid, Article 5(2) of the C094 – Labour Clauses (Public Contracts) Convention specifies that “appropriate measures shall be taken, by the withholding of payments under the contract or otherwise, for the purpose of enabling the workers concerned to obtain the wages to which they are entitled.”

Article 5(1) of the C094 – Labour Clauses (Public Contracts) Convention specifies that “Adequate sanctions shall be applied, by the withholding of contracts or otherwise, for failure to observe and apply the provisions of labour clauses in public contracts.” In the case of UNOPS, failure to comply with such provisions could lead to a deficiency in performance. As per the UNOPS Procurement Manual, if a contractor has shown significant or persistent deficiencies in the performance of a contract which led to early termination of the contract, application of damages, or enforcement of similar actions as documented in a Supplier Performance Evaluation, the Director may decide upon a recommendation by the Vendor Review Committee that such vendor is suspended from doing business for UNOPS.

Conclusion

The world is far from reaching most of SDG 8's targets. To achieve decent work for all women and men, all available instruments must be utilized to address the serious threats recent crises have posed to the global economy.

As a major customer worldwide, the public sector should lead by example by being a conscientious consumer. It must ensure that it does not obtain a "good price" at the expense of the wages and working conditions of the workers employed to carry out public contracts.

The role of public procurement has been acknowledged since 1952 with the ILO Labour Clauses (Public Contracts) Convention, 1949 (No. 94). This Convention covers aspects such as wages (including allowances), hours of work and other working conditions, as well as the health, safety and welfare of workers engaged in the execution of public contracts. Unfortunately, this Convention has been an underused instrument.

UNOPS recognizes the importance of public procurement as a powerful tool in fostering more inclusive and equitable economic opportunities. Based on its experience over the past few years, UNOPS recommends several key measures that can be taken to promote decent work in supply chains for organizations and governments interested in contributing to the achievement of the SDGs through sustainable public procurement.

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