

To: Procurement Sub Committee

On: 27th January 2016

Report by: The Strategic Commercial and Procurement Manager

Heading: Statutory Guidance on the Selection of Tenderers and Award of Contracts, Addressing Fair Work Practices, including the Living Wage, in procurement.

1. Summary

- 1.1. The purpose of this report is to inform the Procurement Sub-Committee of the statutory guidance on addressing 'Fair Work Practices, including Living Wage in Procurement' published by the Scottish Government under section 29 of the Procurement Reform (Scotland) Act 2014.
- 1.2. The guidance was implemented on the 1st November and is available on the Scottish Governments website at the following address;
<http://www.gov.scot/Publications/2015/10/2086>.
- 1.3. Renfrewshire Council as a contracting authority must have regard to it in relation to the selection of tenderers and the award of contracts for regulated procurements (which are procurements where the estimated value of the contract is equal to or greater than £50,000 for goods and services and £2,000,000 for works contracts unless the contract is otherwise exempt from regulation).
- 1.4. The Scottish Government considers payment of the Living Wage, the new rate for which is £8.25, as one of the clearest ways for an employer to demonstrate that it takes a positive approach to its workforce. However, the guidance stresses that failure to pay the Living Wage does not mean that the employer's approach automatically fails to meet fair work standards.
- 1.5. The Council has discretion on the wording of the question adopted to address fair work practices, where it is appropriate to do so the following will be used in the relevant procurement procedures is;
 - Please describe how you will commit to fair work practices for workers (including any agency or sub-contractor workers) engaged in the delivery of this contract.'
- 1.6. The inclusion of the fair work practice question requires taking into account the particular circumstances surrounding the contract to be procured and will have

a 5% evaluation weighting of the tender award criteria, where it is considered proportionate and/or appropriate to do so ensuring an appropriate balance between quality and cost of the contract. Scoring is most likely to be used for services and works contracts, but where there is scope to do so it will be applied to supplies contracts.

- 1.7. Fair work practices should be broadly comparable with those adopted by public sector organisations and those working on public contracts should receive fair, equitable and non discriminatory pay, terms and conditions and reward packages.
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2. Recommendations

- 2.1. It is recommended that the Procurement Sub Committee:
 - 2.1.1. Note that Renfrewshire Council as a Contracting authority must have due regard to statutory guidance.
 - 2.1.2. Note that in line with the requirements of the statutory guidance the template question for use within the Invitation to Tender (ITT) is attached as Appendix 1.
 - 2.1.3. Note that an update on the outcomes that are being achieved from the fair working practices by those delivering contracts awarded by Renfrewshire Council will be provided to Sub Committee by June 2016.
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3. Background

- 3.1. Since January 2013, tenderers have been actively encouraged to pay the living wage. Within the current procurement process tenderers are requested to confirm if they have a living wage policy, if they pay the living wage, use zero hour contracts and sessional staff as well as if they participate in workfare schemes. The responses are for information only and do not form part of the tender award criteria.
- 3.2. Section 9 of the Procurement Reform (Scotland) Act 2014 places a sustainable procurement duty on contracting authorities to consider improvements to the economic, social and environmental wellbeing of the authority's area.
- 3.3. As such Renfrewshire Council is committed to ensuring delivery of high quality services and achieving best value through contracts by:
 - Securing continuous improvement in the performance and delivery of its functions,
 - Maintaining an appropriate balance between quality and whole life cost,
 - Having regard to efficiency, economy, effectiveness and equal opportunities, and
 - Actively contributing to sustainable development.

- 3.4. Use of exploitative and avoidable zero hour contracts are not consistent with fair work practices. Zero hour contracts may be appropriate for seasonal work in sectors such as agriculture or tourism because there is a need to cover unanticipated peaks in service delivery.
 - 3.5. Those delivering public contracts are required to respect International labour standards, set by European Union and the International Labour Organisation demonstrating compliance with employment, equality and health and safety law, including human rights standards. A key requirement for bidders is to describe how they have adopted fair work practices for all workers engaged on delivering the contract.
 - 3.6. Renfrewshire Council as a Contracting authority is also required by Equality legislation to promote equality and have due regard to the public sector equality duty. As such Renfrewshire Council has adopted policies which support the development of a positive and inclusive working environment and organisational culture where all employees have rights to fair treatment, respect and continuous professional development.
 - 3.8 The recommended question to evaluate fair working practices of those delivering public contracts delivering public contracts has been incorporated in the Invitation to Tender (ITT) is attached as Appendix 1.
 - 3.9 In order to ensure that fair working practices continue to be applied a database is being developed to support contract management and monitoring of the fair working practices.
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Implications of the Report

1. **Financial** – Renfrewshire Council as a Contracting authority must have regard to the statutory guidance in relation to the selection of tenderers and the award of contracts for regulated procurements where the estimated value of the contract is equal to or greater than £50,000 for goods and services and £2,000,000 for works contracts and which is not otherwise exempt from regulation.
2. **HR & Organisational Development** – None
3. **Community Planning** – **actively** contribute towards improving the social wellbeing element aligned to the sustainable procurement duty under section 9 of the Procurement Reform (Scotland) Act 2014 (“the Act”) by adopting policies to promote fair work practices in relevant public contracts.
4. **Legal** –The statutory guidance on addressing ‘Fair Work Practices, including Living Wage in Procurement’ published by the Scottish Government under section 29 of the Procurement Reform (Scotland) Act 2014. The statutory guidance commenced on 1 November 2015.
5. **Property Assets** – None.
6. **Information Technology** – None.

7. **Equality & Human Rights**

The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because for example it is for noting only. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.

8. **Health & Safety** – None.

9. **Procurement** – The requirements of the statutory guidance will be incorporated within the procurement procedures that enable evaluating fair working practices in the delivery of contracts awarded by Renfrewshire Council.

10. **Risk** – None.

11. **Privacy Impact** – None.

List of background papers

- (a) Scottish Government's – Statutory Guidance on the Selection of Tenderers and Award of Contracts

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TEMPLATE QUESTIONS FOR USE WITHIN ITTs

This Appendix provides a template question to be included within ITTs where considering fair working practices.

1. Background Information

- 1.1 Renfrewshire Council is committed to ensuring delivery of high quality services and achieving best value through contracts by:
- Securing continuous improvement in the performance and delivery of its functions,
 - Maintaining an appropriate balance between quality and whole life cost,
 - Having regard to efficiency, economy, effectiveness and equal opportunities, and
 - Actively contributing to sustainable development.
- 1.2 Renfrewshire Council has adopted policies which support the development of a positive and inclusive working environment and organisational culture where all employees have rights to fair treatment, respect and continuous professional development. These include;
- Supporting the living wage by guaranteeing a minimum standard of income for all Council employees.
 - A wide range of staff training and development opportunities
 - Flexible working and flexi time
 - Offering a range of employee assistance scheme's
 - A strong commitment to Modern Apprenticeships
 - No inappropriate use of zero hours contracts or other forms of demand driven contracts
 - Respect at Work Policy
 - Equal Pay Policy supported by equal pay audits
 - Code of Conduct for employees
 - Equality and Diversity at Work Policy
- 1.3 Fair work practices should be broadly comparable to those adopted by public sector organisations with those working on public contracts receiving fair, equitable and non-discriminatory pay, terms & conditions and reward packages.

2. Question

- 2.1 Please describe how you will commit to fair work practices for workers (including any agency or sub-contractor workers) engaged in the delivery of this contract.
- 2.2 **Guidance on Response/Answer**
Response/answers need not be constrained to, or be reflective of any of examples given alongside this question.
- 2.3 Good answers will reassure evaluators that your company takes a positive approach to rewarding staff at a level that helps tackle inequality (e.g. through a commitment to paying at least the Living Wage); improves the wider diversity of your staff; provide skills and training, and opportunities to use skills which help staff fulfil their potential; avoids exploitative employment practices (e.g. in relation to matters such as the inappropriate use of zero-hours contracts); takes the engagement and empowerment of staff engaged on this contract seriously, including having arrangements in place to ensure trade union representation where possible; otherwise alternative arrangements to give staff an effective voice and that your company will demonstrate organisational integrity with regards to the delivery of those policies.
- 2.4 This reassurance can include a variety of practices which demonstrate your approach to fair work and should be tangible and measurable examples that can be monitored and reported during contract management procedures.

Appendix 1 - Fair Working Practices within Contracts Policy

3. Additional Guiding Information

- 3.1 Living wage is a term used to describe the minimum hourly wage necessary for shelter (housing and incidentals such as clothing and other basic needs) and nutrition for a person for an extended period of time (lifetime). This standard generally means that a person working full-time, with no additional income, should be able to afford a specified quality or quantity of housing, food, utilities, transport, health care, and recreation. The idea behind the Living Wage is to encourage employers to raise their own rates of pay - and those of contracted staff - to at least £8.25 an hour (UK Rate).

The rate of £8.25 is based on research carried out by the Joseph Rowntree Foundation which looked at developing a formula for calculating a minimum income standard. For their purposes, a Living Wage could be defined as the level of income needed to provide an acceptable standard of living in United Kingdom (outside of London where a different living wage is set) to ensure good health, adequate child development and social inclusion.

- 3.2 Companies delivering on public contracts need to demonstrate that the International labour standards, set by European Union and the International Labour Organisation are being respected, demonstrating compliance with employment, equality and health and safety law, including human rights standards. All of these measures demonstrate positive approaches towards fair working practices.
- 3.3 Providing descriptions of the positive and optimistic measures that demonstrate contribution towards improving the economic, social and environmental wellbeing to achieving better outcomes for everyone by putting something back in the community.
4. The following evaluation methodology can be applied where assessing fair working practices as part of the tender award criteria:

Fair work practices/workforce matters Scoring Guidance	RATING %
No response is provided to the question or a response is provided that is not relevant to the nature of the question or the Tenderer has confirmed that they will not promote good workforce practices in the delivery of this contract.	0
Response is partially relevant however provides limited information in relation to commitment to promote good workforce practices in the delivery of this contract.	25
Response is relevant, acceptable and whilst it broadly demonstrates the Tenderer's commitment to promote good workforce practices in the delivery of this contract it lacks detail on approach/measures/policies	50
Response is relevant and provides good information in relation to the Tenderer's commitment to promote good workforce practices in the delivery of this contract. The response is sufficiently detailed to demonstrate a good understanding of the impact of good workforce practices on the Quality of contract delivery and provides details on how these practices will be applied, monitored and refined during the contract.	75
Response is completely relevant and excellent overall, and gives a comprehensive and unambiguous account of the Tenderer's commitment to promote good workforce practices in the delivery of this contract. Response demonstrates a good understanding of the impact of good workforce practices on the Quality of contract delivery and is supported by evidence of how this commitment is embedded across the organisation, and how these practices will be applied, monitored and refined during the contract. Response may be supported by relevant case studies	100