



## **Public Procurement**

### **A consultation on changes to the public procurement rules in Scotland**

#### **A response from the Scottish Living Wage Campaign**

##### **Introduction**

The Scottish Living Wage Campaign was formed in 2007. The Scottish Living Wage Campaign (SLWC) is led by the Poverty Alliance and the STUC and supported by the Church of Scotland, Unison, Unite, GMB, PCS, NUS Scotland, Oxfam and the Child Poverty Action Group.

The Scottish Living Wage Campaign was active in campaigning on the Procurement Reform Bill and we welcome now this opportunity to respond to the consultation on changes to the public procurement rules in Scotland.

##### **The Living Wage**

The Living Wage is calculated and set annually by the Centre for Research in Social Policy (CRSP) at Loughborough University. The calculation is based on the Minimum Income Standard for the United Kingdom, the product of research by CRSP and funded by the Joseph Rowntree Foundation. CRSP's research looks in detail at what households need in order to have a minimum acceptable standard of living and includes things such as food, clothing, rent, council tax, fuel for heating your home and childcare (if applicable). What is included in this minimum standard is decided upon by groups of members of the public. The costs of these items are then sourced from national providers and chains. Therefore, the Living Wage is rooted in social consensus about what people need to makes ends meet.

##### **The Living Wage in Procurement**

As a campaign primarily interested in tackling in-work poverty, we are keen to ensure that all workers are paid at least the Living Wage. We note under Section 2.2 that procurement strategies must describe the public body's general policy on payment of "a living wage" to persons involved in producing, providing or constructing the subject matter of regulated procurements.

It is important for us that the Living Wage is expressly defined as the rate advocated by the Living Wage Foundation, currently set by the Centre for Research and Social Policy, who calculate the rate based on the Minimum Income Standard and are responsible for the uprating every November. This is essential to ensure consistency across Scotland.

We campaigned to see to all contracting authorities stipulate payment of the Living Wage as a condition for performance of the contract. We welcomed the two Scottish Government amendments to the Procurement Reform Bill requiring local authorities to include the living wage as part of the evaluation process in procurement processes. However, we are concerned that for many local authorities this has not been clear enough and as a result many of them have been unable to ensure their contracted staff are paid the Living Wage.

### **Statutory Guidance - Selection of tenderers and award of contracts**

We agree that the Section 29 statutory guidance can identify the principles and values which should be applied when considering a business's suitability to deliver a public contract.

We agree that, where relevant, contractors delivering public contracts must demonstrate that they meet high standards and values and, importantly, we believe this will always be relevant.

In addition, we fully endorse the notion that the public sector has a right to expect its contractors to treat their employees fairly and with respect and we believe that paying the Living Wage is a crucial part of that fair treatment and respect.

As argued previously, we believe that it is possible under the current EU public procurement regime to incorporate payment of the living wage as a contract performance clause in all public procurement contracts in Scotland. However, in the absence of such an approach from the Scottish Government, we believe that the statutory guidance could and should promote the Living Wage through the inclusion of a clear but rebuttable presumption that public bodies should exclude businesses that do not pay the Living Wage. We believe the statutory guidance should make clear that this presumption can be rebutted if and when a tender is received that includes workers that are to be posted to the UK from elsewhere within the EU.

By doing this we can ensure that public bodies are able to include payment of the Living Wage within procurement strategies in a robust and meaningful manner but without the risk of opening themselves up to legal challenge.

Failing our alternative approach outlined above, we welcome the proposal under section 4.11 that the statutory guidance will require businesses which have contracts with public bodies to have a positive approach to their workforce, where this can be demonstrated to have an impact on the quality of the product, service, or works delivered. We also note that payment of the Living Wage is included as one possible example of this positive approach.

As a campaign, however, it is vital for us that the Living Wage is always included and is not merely one of a range of possible options. The Living Wage is an important tool for ending in-work poverty and ensuring that at least everyone who is paid from the public purse is taking home a fair day's pay for a fair day's work. We do not

believe that public money should be spent on minimum wage jobs which trap people in poverty.

### **Price versus quality**

It is important to the Scottish Living Wage Campaign that awards are not made on the basis of price or cost alone. We share the views of the Scottish Government in Section 2.1 that it is important to balance cost, quality and sustainability to get the best value for money. We would therefore suggest that price makes up no more than fifty per cent of points awarded as part of the selection process. There will always be one bidder that scores 100 per cent on price simply due to having the lowest price, but the range of points awarded for quality tend to be narrower. As a result, no matter how well-intentioned the requirements on the quality side of the assessment, without at least a 50/50 split between price and quality, considerations around fair work practices such as the Living Wage are unlikely to receive anywhere near the full weight they deserve. We appreciate that the consultation is at pains to ensure that whilst Contracting Authorities must assign some points to quality they will retain the flexibility to assign far less points to quality as a reflection of their priorities, however we firmly believe that tackling in work poverty and doing as much as we can to ensure that workers paid from the public purse are treated fairly and with respect must be a top priority and should not be overlooked in the pursuit of a cheaper price. An approach that requires at least a 50/50 split between price and quality should ensure that public bodies are still achieving value for money while also ensuring a fair deal for workers.

### **Community Benefit**

We believe, in reference to 2.4, the statutory threshold for community benefit levels should be lowered from £4million to ensure that as many communities as possible are positively impacted on. As part of this, the Scottish Living Wage Campaign would like to see a commitment to tackling inequality included as a key indicator of economic and social wellbeing. In Scotland, public procurement is seen as the primary lever of economic growth. If we re-think this and change its primary role to promoting positive social outcomes, we would begin to change the way public money is used in Scotland.

### **Tax Evasion**

We believe procurement must be used as part of package of tools to end tax evasion. Doing this would be a massive boost to public finances. There should be pre-qualification disclosure of company taxation policies, and not just of illegal tax evasion. Public bodies should be able to evaluate a tender on the basis of which company pays tax or not, with penalty clauses for tax evasion and aggressive tax avoidance, post contract. Assessment of bids could make use of the Fair Tax Mark and/or other similar checks developed in future that monitor companies' tax behaviour, locally and globally.

By doing this we can ensure that public money is going to companies who pay their fair share of tax and contribute back to society. Organisations who are not willing to pay back to the public purse, should not benefit from it.

### **Employment standards**

While the Living Wage is a vital tool to tackling in-work poverty, it is not the only one. We are supportive of calls for procurement to be used to drive up employment standards. This includes: full compliance with the public sector equality duty, trade union recognition, adherence to collective agreements and the two tier workforce provisions, proper training and ending other poor employment practice such as zero hours contracts. Greater earnings equality should be linked to government support - encouraging companies to lower pay multiples, improving employee motivation and wider socioeconomic equality. Companies which breach employment/health and safety laws should not be eligible for public contracts.

### **Conclusion**

The Scottish Living Wage Campaign welcomes the introduction of new Procurement Regulations and the planned Section 29 statutory guidance and we hope this will include a duty on public bodies to ensure that all contracted staff are paid at least the Living Wage. We believe this can be done, and have offered an alternative way to do this through the statutory guidance and a rebuttable presumption that public bodies should exclude businesses that do not pay the Living Wage. The Living Wage is a vital tool for tackling in work poverty and the Procurement Regulations offer the real possibility of lifting thousands of workers out of low pay. While as a Campaign we are focused on the Living Wage, we have supported arguments put across by our colleagues in Trade Unions and the voluntary sector to ensure that the new Procurement Regulations benefit as many people as possible.

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