

Finance and Resources Committee

10.00am, Thursday, 14 January 2016

Living Wage and Workforce Related Matters in Procurement Update

Item number	7.3
Report number	
Executive/routine	
Wards	

Executive summary

On 1 January 2013, as part of the Capital Coalition Pledges, the Council made a decision to pay all Council employees the Living Wage.

The Council has further committed to encouraging the wider adoption of the Living Wage amongst contractors. In support of this commitment a report recommending several pilots to encourage the Living Wage and other favourable workforce related conditions through the tender process was agreed at the Finance and Resources Committee in February 2015.

This report considers the results of those pilots (two of which are tenders being recommended to this Committee for award). The report also considers the Council's proposed approach to adopting the recent guidance from the Scottish Government on the Selection of Tenderers and Award of Contracts addressing Fair Work Practices including the Living Wage in Procurement (Statutory Guidance on Fair Work Practices).

Links

[Coalition pledges](#)
[Council outcomes](#)
[Single Outcome Agreement](#)

Living Wage and Workforce Related Matters in Procurement Update

Recommendations

- 1.1 The Finance and Resources Committee is requested to:-
 - 1.1.1 note the contents of this report;
 - 1.1.2 agree the proposed approach to adopting the Scottish Government's Statutory Guidance on Fair Work Practices including the Living Wage in Procurement as standard in future tender evaluations; and
 - 1.1.3 agree to commence the accreditation process to become a Living Wage Employer.

Background

- 2.1 The City of Edinburgh Council has committed to providing for Edinburgh's economic growth and prosperity. The Coalition Pledges include a commitment to: "introduce a Living Wage for Council employees, encourage its adoption by Council subsidiaries and contractors and its wider development."
- 2.2. The Living Wage, currently £8.25 an hour, is calculated using a methodology developed by the Centre for Research in Social Policy at Loughborough University to ensure a basic, but acceptable, standard of living above poverty ("Living Wage"). The uprating each year takes into account rises in living costs and what is happening to wages generally.
- 2.3 Following agreement of this pledge by Council in August 2012, the Edinburgh Living Wage (ELW) was introduced for Council staff on 1 January 2013 and subsequent uplifts have followed in line with Living Wage increases. For both 2015/16 and 2016/17, the ELW will be paid to all relevant staff as part of the agreed overall pay settlement for Local Government employees. The ELW has also been applied to agency workers on assignment to the Council from that date.
- 2.4 The Council has also made a commitment to look at the Living Wage through procurement. Whilst Scottish Government guidance advises that the law does not currently allow public bodies to insist that suppliers pay the Living Wage, they are permitted to encourage it. This includes exploring ways in which the Council can encourage its subsidiaries and contractors to commit to the Living Wage as part of a procurement process, whilst remaining within the procurement rules.

- 2.5 During the passage of the Procurement Reform (Scotland) Act 2014, the Scottish Government sought clarification from the European Commission as to whether it was compatible with European legislation that a public authority could require their contractors to pay a Living Wage. The European Commission's response was that any requirement that contractors pay their employees a level set higher than the UK's National Minimum Wage as part of a tendering process or public contract is unlikely to be compatible with European law. This response is set out in the Scottish Procurement Policy Note 4/2012 (SPPN 4/2012) and is supported by relevant European case law. Therefore the current advice from the European Commission and the Scottish Government is that while a Living Wage can be encouraged, currently it cannot be mandated.
- 2.6 To support the Council's commitment to encourage payment of a Living Wage by contractors, the Council has been exploring the options available whilst being mindful of these legal constraints. This report sets out the results of both piloting different approaches and the ongoing data gathering from contractors.
- 2.7 More recently the Scottish Government introduced Statutory Guidance on Fair Work Practices. This Guidance brought into force s29 of the Procurement Reform (Scotland) Act 2015 on fair working practices which reflects the recognition that public procurement will be a key driver of policy development and service delivery in supporting economic growth. The Statutory Guidance sets out how public bodies should evaluate fair working practices, including the Living Wage in selecting tenderers and awarding contracts.

Main report

Pilots

Stair Cleaning

- 3.1 To support the Council's commitment to encourage payment of a Living Wage by contractors, the Council's Living Wage Working Group, in consultation with Commercial and Procurement Services, Human Resources and Organisational Development, has been exploring the options available in a number of pilots.
- 3.2 The first of the pilots was a Framework Agreement for the provision of communal stair cleaning services with a total annual value of around £665,000. The Council's current contractor ISS was keen to introduce the Living Wage and, through contract negotiations at the point of extending the contract, agreed to the Living Wage being introduced as from 1 May 2015. As such all operatives working on the contract, approximately 40 people, received a wage rise of over £1 an hour. The financial impact is that the running costs of the contract will increase by £11,000 per month but as it is a self financing contract these costs can be contained within the existing budget.

Trauma and Final Cleaning in Domestic Properties

- 3.3 The second pilot was for the contract to undertake Trauma and Final Cleaning in Domestic Properties being recommended to this Finance and Resources Committee for award. This contract is used to clean properties for the homes of customers receiving services from Health and Social Care. The annual value of the contract is approximately £270,000.
- 3.4 In the tender documents for the services the Council made clear its commitment to fair work practices and payment of the Living Wage. To reflect the recognition that the quality of a contract will often depend upon a having a properly managed, motivated and remunerated workforce a question relating to workforce matters was included. The question stated that the Council encourages the Living Wage as part of a package of workforce measures which includes terms and conditions such as training and development, holiday provision and family friendly policies, as well as discouraging “zero hours contracts” where they have a negative impact upon employee conditions and any practice of employee blacklisting. There were 5% of the total quality marks allocated to this question. The bidders were asked to describe how their organisation proposed to commit to being a best practice employer in this respect in the delivery of the contract.
- 3.5 While the winning bidder said they would consider paying the Living Wage in the future and that they commit to paying a “fair market wage”, their offer did not provide that they would pay the Living Wage for this contract. Of the 13 bids received, 5 bidders confirmed they would pay Living Wage to employees working on this contract. A further 4 bidders stated they would consider paying Living Wage, but would look to increase the rates payable by the Council. Of the top 4 bids, only one committed to paying the Living Wage on this contract and this was the fourth placed bid.
- 3.6 Although there was an indication of commitment to the Living Wage, the 5% allocation may have been insufficient to influence bidders to pay the Living Wage. Due to the wide scope of the question bidders could still score well on the question without offering Living Wage. The scoring ratios used were 40% of the score given to quality and 60% given to price. The scope of this question did have a positive impact as it led to bidders disclosing the use of zero hour contracts which saw their bids negatively scored on this question due to this.

Manned Security

- 3.7 The third pilot was the procurement of manned security guarding services for a variety of buildings and sites across the city. The procurement exercise was undertaken by Scotland Excel on behalf of local authorities resulting in a new Security Services and Equipment Framework. The Council can draw down services from this framework following a mini-competition between potential providers. The evaluation criteria used was 60% - Commercial/ 40% - Technical.
- 3.8 In recognition of the importance of working practices in the context of security provision it was considered proportionate to allocate 30% of the quality marks to

workplace matters and the same question as used in the Trauma and Final Cleaning Contract was used. In addition, the bidders were all asked to submit a Living Wage bid as an alternative as well as a standard bid. With the exception of one bidder all submitted alternative bids.

- 3.9 Whilst the law does not currently allow public bodies to insist that suppliers pay the Living Wage, they are permitted to encourage it and in this case the preferred bidder submitted both a Living Wage and non-Living Wage based tender.
- 3.10 The preferred bidder submitted the lowest price for both Living Wage and non-Living Wage options and the Most Economically Advantageous Tenders of all those submitted. This offers the Council the ideal opportunity to place a Living Wage-compliant contract. Although the Living Wage of £8.25 is approximately 23% more than the National Minimum Wage (NMW) of £6.70, the preferred bidder has only increased its bid by 8.7% to comply with the Living Wage. It is also cheaper than 3 out of 5 bidders' prices for the non-Living Wage option. This report is considered elsewhere on the agenda.

The Statutory Guidance on Fair Work Practices

- 3.11 Following the Statutory Guidance provided by the Scottish Government under s29 of the Procurement Reform (Scotland) Act 2015 will assist the Council in achieving its objectives of encouraging contractors to pay a Living Wage. The guidance sets out how public bodies should evaluate fair working practices, including the payment of the Living Wage when selecting tenderers and awarding contracts. The guidance makes it clear that the Scottish Government considers payment of the Living Wage to be a significant indicator of a contractor's commitment to fair work practices and payment of the Living Wage is one of the clearest ways of demonstrating a positive approach to your workforce. The Council is supportive of this approach.
- 3.12 It should be noted that whilst the guidance explains that failure to pay a Living Wage would be a strong negative indicator, it does not mean that the employer's approach automatically fails to meet fair work standards.
- 3.13 The Council will follow the recommended methodology of the Scottish Government and on each occasion before beginning a procurement exercise for procurements over £50,000 (services and goods) and over £2M for works, the Council's Commercial and Procurement Services will consider whether it is relevant and proportionate to include a question on fair work practices to be evaluated as part of the tendering exercise. Where appropriate and proportionate this approach will also be considered for contracts under that value.
- 3.14 The question will form part of the qualitative evaluation and the Council will ask tenderers to describe how they will commit to fair working practices for workers (including agency or sub-contracted workers) engaged in the delivery of that contract. Examples as to what the Council considers fair working practices are

provided for bidders and include having a fair and equal pay policy, a commitment to paying at least the Living Wage, commitment to Modern Apprenticeships and the development of Scotland's young workforce, support for learning and development, stability of employment and hours of work and avoidance of exploitative work practices such as the inappropriate use of zero hours contracts, flexible working and support for family friendly working and Trade Union recognition or alternative arrangements.

- 3.15 The weighting allocated to this question will depend upon the impact that the quality of the service being delivered or works performed is likely to be affected by the quality of the workforce engaged in the contract. It will therefore be decided on a case by case basis but in order for it to have an impact the percentage will need to be meaningful.

Accreditation as a Living Wage Employer

- 3.16 As the Council will be following the Scottish Government guidance it would be possible to consider applying for accreditation with Living Wage Foundation. Accreditation as a Living Wage Employer requires:-

All directly employed staff are paid the Living Wage; and

To ensure to the extent permitted by law that any of its contractors which supply an employee (other than an apprentice or intern) on Council premises or land which it is responsible for maintaining e.g. roads and more recently extended to include care at home, to pay a Living Wage.

- 3.17 It is sufficient for accreditation purposes that a plan with achievable milestones is in place for contractors i.e. renewing contracts in the future and embedding this into procurement. The Council would require to make plans for the current 800 suppliers with contracts over £50,000, including Council Companies. There would be 3 issues that would impact upon the ability to apply for accreditation:-

1. Data - while Commercial and Procurement Services have been starting to capture which of our providers pay staff a Living Wage our data is currently incomplete. The top suppliers on the Council's contract register were approached and asked if they did not pay a Living Wage to all staff how much would it cost to do so? From 150 or so suppliers there were 107 responses. Very approximate estimated costs from these suppliers were an increase in £1.38M per annum. While this captures what current providers pay this may not present an accurate picture as to what any future costs may be following tender exercises.
2. Legality - as set out above the current legal position is that public authorities cannot compel payment of the Living Wage. The accreditation process does however recognise for accreditation purposes that promotion of it is "to the extent permitted by law".
3. Affordability - Can the Council afford the additional costs potentially to be passed on to it? Contracts such as the Care at Home or Care Homes

provision would likely be the largest costs. The pilots to date indicate that an average of 6-9% increase in staffing costs at least would be passed on.

- 3.18 The Council recognises that there may be implications for providers that compete for work both in the public and private sector. Concerns that being required to pay a Living Wage may make them less competitive were expressed during surveys by a few. Another unintended consequence could be the creation of a two tier workforce by some providers (and as acknowledged by the Living Wage Foundation) with those providing services to the Council being paid more than their colleagues working in the private sector. However on balance these risks are considered to be outweighed by the benefits to the city, local economy and community, of encouraging contractors to pay a Living Wage. It is therefore recommended that the Committee agree to pursue the accreditation process to become a Living Wage Employer.

Measures of success

- 4.1 The measure of success of introducing the qualitative assessment of workforce related matters will be improved employment conditions for third party employees, delivery of overall better value contracts and any resulting increase in costs passed onto the Council being kept to a minimum.

Financial impact

- 5.1 The projected additional cost of uplifting the Living Wage cannot be accurately predicted as it will generally be introduced at the stage of changing provider. Initial modelling is suggesting an additional 6-9% over and above what current providers are paid where the majority of costs are based on employee costs and a considerable proportion of the employees are currently paid below a Living Wage. Any additional costs from adopting this approach would need to be accepted by the Council. The implementation of the Scottish Government guidance methodology will not allow the Council to know both a Living Wage and non-Living wage option so the additional cost of this may never be able to be identified.

Risk, policy, compliance and governance impact

- 6.1 The Council has already taken initial steps to encourage providers including providers of care at home services to pay the Living Wage. Following the statutory guidance means significant steps to encourage are now being taken.
- 6.2 There is a risk of a successful legal challenge if the Council were to fail to have regard to what is statutory guidance.

- 6.3 There is a significant risk of increased financial burden for the Council if all or part of the increased costs to contractors are passed on to the Council. This may be in part mitigated by improved service provision.
- 6.4 Policy and practice will be updated once Committee has taken a decision.

Equalities impact

- 7.1 An increase to the Living Wage for the employees of Council providers would positively impact upon employees currently paid less than the Living Wage.
- 7.2 It is considered that there would be no equal pay issues as both men and women on the same grade would be paid the same increased rate.

Sustainability impact

- 8.1 Following the statutory guidance and taking further steps to encourage payment of the Living Wage is likely to encourage Council providers to improve the workforce conditions of their employees.

Consultation and engagement

- 9.1 To date there has been a number of surveys with the Council's top providers in terms of spend and third sector grant recipients. There has also been engagement with care providers in connection with the national care homes contract. All recent tenders include an explanation of the Council's commitment to the Living Wage and a question as to whether providers currently pay the Living Wage.

Background reading/external references

Statutory guidance on Fair Working Practices

<http://www.gov.scot/Resource/0048/00486741.pdf>

[Scottish Procurement Policy Note 4/2012,\(SPPN 4/2012\).](#)

[http://www.resolutionfoundation.org/wp-content/uploads/2014/08/Beyond the Bottom Line - FINAL.pdf](http://www.resolutionfoundation.org/wp-content/uploads/2014/08/Beyond_the_Bottom_Line_-_FINAL.pdf)

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Links

Coalition pledges	P25 - Introduce a “living wage” for Council employees, encourage its adoption by Council subsidiaries and contractors and its wider development
	P28 - Further strengthen our links with the business community by developing and implementing strategies to promote and protect the economic well-being of the city
Council outcomes	CO25 - The Council has efficient and effective services that deliver on objectives
Single Outcome Agreement Appendices	