



Addressing Fair Work Practices in Procurement

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1. Approach and background

Public bodies in Scotland, including the University of Edinburgh, have the duty to comply with the [Statutory Guidance on Addressing Fair Work Practices, including the Living Wage, in Procurement](#), which sets a duty to consider assessment of a supplier’s approach to promoting fair work for all regulated public procurements (above £50,000), including consideration of the Living Wage for UK-based workers as defined by the Living Wage Foundation (currently \$8.75/hr, see www.livingwage.org.uk).

The University of Edinburgh is committed to promoting Fair Work Practices (FWP) in all its activity and expects its suppliers to pay fair and reasonable remuneration, including the Living Wage for UK-based workers, for all those involved in the delivery of our contracts.

The University’s approach to FWP is to adopt the Statutory Guidance and commit to addressing fair work as part of its [Procurement Strategy](#):

“The University recognises the values of a well-motivated and dedicated workforce both in its own organisation and in those of its suppliers. Please refer to the Business Pledge. Where relevant or proportionate, the delegated authority will consider the fair work practices of suppliers in regulated procurements.”

For each regulated procurement (and where relevant and proportionate, below the regulated level), the Procurement Office will work with end users to assess whether FWP should be included and agree on the approach. This should be noted in the Strategy document and the results should be recorded in the Recommendation Report. Wherever possible, the reporting autofill templates located in the Sustainability Test Tool should be utilised to note FWP practice measures taken and be copied into the strategy and recommendation reports.

2. ITT Award Questions, Scored and Non-scored

In most cases, this question should be scored, especially where the promotion of Fair Work is determined to be relevant for the contract, and in particular for service and works contracts. Weighting should reflect the relevance of fair work to the contract, including risk of poor practices and potential impact to the quality of the delivery.

a. Scored

Fair Work Practices

The University is interested in working with suppliers who demonstrate their commitment to Fair Work Practices in the delivery of University contracts via voluntary measures that, where appropriate, go above and beyond compliance with legal obligations. Please describe any voluntary measures your organisation and subcontractors will commit to undertake in order to promote Fair Work Practices, which could include consideration of payment of the Living Wage as defined by the Living Wage Foundation (www.livingwage.org.uk), in relation to the delivery of this contract, in particular with regard to the following areas:

- a) Payment of fair remuneration that ensures a reasonable standard of living for workers involved in the delivery of this contract, for example, if based in the United Kingdom, payment of the Living Wage (currently £8.75 per hour)
- b) Demonstrating stability of employment for workers involved in the delivery of this contract ensuring there is no inappropriate use of short-term, fractional or zero-hours contracts
- c) Promoting equality of opportunity and developing a workforce which promotes a positive environment and equal opportunities in terms of characteristics such as age, gender, religion or belief, race, sexual orientation and disability;
- d) Support for progressive workforce engagement to give staff an effective voice, including where applicable, full Trade Union recognition and representation

Bidder responses will be evaluated on the quality of responses overall, including on the relevance of response and aspects addressed to the workers actually delivering the contract, any potential impact these measures have on the quality of contract delivery, explanation of procedures and monitoring in addition to statement of policy or intent, and response focus on proactive, voluntary measures that demonstrate clear commitments to promoting fair work in contract delivery.

For more information about Fair Works Practices, see the Scottish Government's Statutory Guidance on the Selection of Tenderers and Award of Contracts Addressing Fair Work Practices, including the Living Wage, in Procurement (PDF available online at: <http://www.gov.scot/Resource/0048/00486741.pdf>), as well as the [Fair Work Framework](#).

b. Non-Scored—for info only

Fair Work Practices – For Information Only

The University is interested in working with suppliers who demonstrate their commitment to Fair Work Practices in the delivery of University contracts via voluntary measures that, where appropriate, go above and beyond compliance with legal obligations. Please describe any voluntary measures your organisation and subcontractors will commit to undertake in order to promote Fair Work Practices, which could include consideration of payment of the Living Wage as defined by the Living Wage Foundation (www.livingwage.org.uk), in relation to the delivery of this contract, in particular with regard to the following areas:

- a) Payment of fair remuneration that ensures a reasonable standard of living for workers involved in the delivery of this contract, for example, if based in the United Kingdom, payment of the Living Wage (currently £8.75 per hour)
- b) Demonstrating stability of employment for workers involved in the delivery of this contract ensuring there is no inappropriate use of short-term, fractional or zero-hours contracts
- c) Promoting equality of opportunity and developing a workforce which promotes a positive environment and equal opportunities in terms of characteristics such as age, gender, religion or belief, race, sexual orientation and disability;
- d) Support for progressive workforce engagement to give staff an effective voice, including where applicable, full Trade Union recognition and representation

For more information about Fair Works Practices the Scottish Government's Statutory Guidance on the Selection of Tenderers and Award of Contracts Addressing Fair Work Practices, including the Living Wage, in Procurement (PDF available online at: <http://www.gov.scot/Resource/0048/00486741.pdf>), as well as the [Fair Work Framework](#). This question is for information only.

3. How do I adapt the FWP question?

a. Focus on relevant FWP aspects – If one or more fair work practice aspect (see appendix A of statutory guidance or the [Fair Work Framework](#)) represents a high risk in your purchase area, then consider mentioning these aspects specifically in your question version to improve the relevance of responses (see example adapted specific FWP question below)

- i. **How do I select which aspects are relevant?** Specific fair work aspects should be selected based on risks identified via Scottish Sustainable Procurement tools (mainly, the SPPT) or other risk analysis method, and should include aspects that are:
 1. High risks for the purchase area (e.g., a history of inadequate pay in your purchase area), or
 2. Aspects that are likely to affect quality of product or service delivery (e.g., if low pay or lack of access to training in purchase area may affect retention of staff, etc.)
- ii. **PLEASE NOTE** - due to EU procurement rules, application of the Living Wage cannot be considered on its own as the sole indicator for a scored fair work practices question

- b. Focus on fair work impacts directly involved in contract vs. general company policies** - To maintain a link to the subject matter of the procurement, request information on how policies/procedures affect workers directly involved in delivering your good or service, including relevant subcontractors, rather than general organisational policies
- i. Subcontractors** – if subcontractors are likely to deliver a significant portion of your good or service, adapt the FWP question to request information about FWP of relevant subcontractors, and methods to ensure FWP are upheld for all those involved in delivering your contract
- C. Accommodate international bidders** – Different countries have different labour standards and costs of living, and the FWP question should be adapted so it does not discriminate against international bidders. In particular, references to the official Living Wage should always be mentioned as relating to the UK (see adapted FWP question example below). Buyers can request that suppliers evidence fair remuneration that guarantees a reasonable standard of living for workers delivering the contract, but not include a blanket criteria of payment of the Living Wage (the Living Wage is an independent measure of a rate of pay that matches the cost living in the UK outside of London, and is only applicable to workers who will be based in the UK). Consider providing a URL link to the FWP statutory guidance in your question so bidders can find more information on what constitutes FWP in Scotland.
- d. Emphasise voluntary measures rather than compliance with the law**
- i. The FWP question is a scored award question**, and thus buyers should adapt FWP questions to request that suppliers limit answers to appropriate voluntary measures that demonstrate a positive approach to promote FWP for workers directly involved in the delivery of your requirement, as opposed to legal compliance (see adapted FWP question examples below). Issues dealing with compliance with legislation should be covered in the European Single Procurement Document (ESPD) at selection stage.
 - ii. Voluntary compliance measures** - Proactive voluntary measures that organisations take to ensure active compliance with legislation, for instance voluntary training or auditing activity, should be considered as a voluntary measure that supports positive FWP
 - iii. Concern about legal compliance?** – Buyers should use ESPD selection stage to ensure compliance with relevant law
 - 1. ESPD section 3D** - All bidders self-certify their compliance to relevant international and national environmental, social, and labour law via section 3D of the European Single Procurement document (ESPD)

- 2. Discretionary exclusion** - If there is a concern about legal compliance related to one of the FWP aspects listed in the statutory guidance or Fair Work Convention, then the law or area of concern should be mentioned specifically in the PCS contract notice as a discretionary exclusion ground related to ESPD 3D (e.g. Equalities Act, Modern Slavery Act, International Labour Convention compliance, etc.) alongside the standard exclusion statement (see Procurement Journey for more information on exclusion). Buyers can also request statements or evidence of compliance to relevant laws from bidders at any stage of the procurement

4. Evaluation and Scoring

Fair Works Practice – EVALUATION ADVICE

What should we focus on to ensure the question is scored appropriately?

- a. Focus the question on relevant FWP aspects** - If possible, identify the high risk areas in your purchase area (e.g., issues with low pay and stability of employment) and adapt the question beforehand to focus on these aspects, which will help evaluators distinguish between relevant and non-relevant responses
- b. Focus question on FWP aspects that may impact contract quality** – If any aspects of FW are likely to impact the quality of delivery, for instance, if low wages may impact employee retention in your purchase area, these risks should be mentioned in the adapted question.
- c. Look for direct responses to the question and relevance to contract workers**, not just general policies - Favour responses that directly respond to the issues raised or specifically address how their policies affect workers involved in your contract, rather than a list of general company policies (general policies may directly relevant, however the link to contract workers should be clear)
- d. Look for procedures and monitoring as well as policies** – Good policies are one aspect of positive FWP approach, however, bidders that mention how their procedures are enacted and monitored to ensure that their policies are actually met may demonstrate a stronger, more proactive approach to FWP
- e. Focus on voluntary, proactive measures rather than legal compliance** – Buyers should request that suppliers limit answers to appropriate voluntary measures that demonstrate a positive approach to promote FWP for workers directly involved in the delivery of your requirement, as opposed to legal compliance (see adapted FWP question examples below). Issues dealing with compliance with legislation should be covered in the European Single Procurement Document (ESPD) at selection stage. However, proactive voluntary measures that organisations take to ensure active compliance with legislation, for instance voluntary training or auditing activity, should be considered as a voluntary measure that supports positive FWP.

5. Reporting

For each regulated procurement (and where relevant and proportionate below the regulated level), the Procurement Office will work with end users to assess whether FWP should be included and agree on the approach. This should be noted in the strategy document and the results should be recorded in the Recommendation Report. Wherever possible, the reporting autofill templates located in the Sustainability Test Tool should be utilised to note FWP practice measures taken and be copied into the strategy and recommendation reports.

6. Optional additional questions

a. Can I ask more than one question about specific fair working practice aspects?

- i. **Yes.** Compliance with the statutory guidance on promoting FWP by including a FWP award question does not preclude buyers from taking advantage of sustainability flexibilities in procurement legislation to set additional appropriate award criteria, technical specifications or contract performance conditions related to specific aspects of FWP. These measures must, however, be proportional and linked to the subject matter of the contract (specifically, to workers directly involved in your contract), and cannot include a wage requirement that discriminates against international bidders. Separate questions should not suggest requirements beyond legal obligations.
- ii. **Continuous improvement** – if FWP is a high risk in the purchase area but suppliers lack expertise or resources to improve FWP on their own (e.g., in the case of SMEs), consider including an additional award question that gauges bidders' forward-looking commitment to work with the buyer to monitor and implement FWP for workers delivering the good or service over the life of the contract.

b. Living Wage Question—do not score

Living Wage – for information only

The University of Edinburgh is an accredited Living Wage Employer committed to promoting fair work practices and expects reasonable remuneration to be paid to all workers involved in the delivery of our contracts, including the Living Wage for UK-based workers. Will all workers directly involved in the delivery of this contract, including relevant subcontractors, be paid at least a living wage as defined by the UK living wage foundation (currently £8.75 per hour, see www.livingwage.org.uk)? If not, will the bidder commit to working with the University of Edinburgh to implement the Living Wage over the course of the contract period? The winning supplier must be able to confirm upon request the Living Wage status of workers throughout the contract period.

This question is for information only, and bidders' responses will not be evaluated or scored as part of the award criteria. For workers outside the UK, if no independent, objective measure is available, please provide a short explanation

of how worker pay on this contract will provide workers a reasonable standard of living in the relevant area.

c. Equalities question

Equalities

The University of Edinburgh is committed through our Equalities and Diversities Strategy to promote equality for all, and expects our suppliers to take a serious, positive approach to promoting equalities in the workplace for those involved in the delivery of our contracts. Without prejudice to your legal obligations under the UK Equalities Act 2010, please describe measures your organisation takes to promote a positive culture and equal opportunity for workers who will be involved in this contract, especially in regard to the protected characteristics of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. These measures could include, but are not limited to voluntary equalities training and awareness sessions, activities to promote inclusion or a positive environment for all, including those with protected characteristics, or the availability of subcontracting opportunities to supported businesses (see [Scottish government website](#) for more info). Please also confirm whether workers involved in the delivery of this contract will be trained regarding their rights and responsibilities under the Equalities Act prior to or during the contract period.

d. Supply chain transparency—for info only

The University of Edinburgh is interested in working with all of our suppliers to improve the transparency, social responsibility and sustainability throughout our supply chains. Will the bidder commit to working with the University to improve transparency in their supply chains/subcontracting and support the University's [Social Responsibility and Sustainability policies](#), including Modern Slavery, Fair Trade, Conflict Minerals, Good Food, and other related policies?

This question is for information only, and bidders' responses will not be evaluated or scored as part of the award criteria.

Appendix – Original FWP Question

Original Fair Work Practice Question from Statutory Guidance

Fair work practices – sample Invitation to Tender Question

(Note: This question should be adapted to take account of the particular circumstances surrounding the goods, works or services being procured and to reflect those aspects of fair work practices which are relevant to the subject matter of the contract.)

The Public Sector in Scotland is committed to the delivery of high quality public services, and recognises that this is critically dependent on a workforce that is well-rewarded, well-motivated, well-led, has access to appropriate opportunities for training and skills development, are diverse and is engaged in decision making.

These factors are also important for workforce recruitment and retention, and thus continuity of service. Public Bodies in Scotland are adopting fair work practices, which include:

- a fair and equal pay policy that includes a commitment to supporting the Living Wage, including, for example being a Living Wage Accredited Employer;

- clear managerial responsibility to nurture talent and help individuals fulfil their potential, including for example, a strong commitment to Modern Apprenticeships and the development of Scotland's young workforce;
- promoting equality of opportunity and developing a workforce which reflects the population of Scotland in terms of characteristics such as age, gender, religion or belief, race, sexual orientation and disability;
- support for learning and development;
- stability of employment and hours of work, and avoiding exploitative employment practices, including for example no inappropriate use of zerohours contracts;
- flexible working (including for example practices such as flexi-time and career breaks) and support for family friendly working and wider work life balance;
- support progressive workforce engagement, for example Trade Union recognition and representation where possible, otherwise alternative arrangements to give staff an effective voice.

In order to ensure the highest standards of service quality in this contract we expect contractors to take a similarly positive approach to fair work practices as part of a fair and equitable employment and reward package. Fair work practices (xx%) Q - 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. Answers need not be constrained to, or be reflective of any of examples given alongside this question. 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; 11 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. 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. Insert response here