



Breakfast Briefing: Public Sector Contracts and Employment Law

Wed 3 August 2022, 8-8.30 am

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What we will be covering today

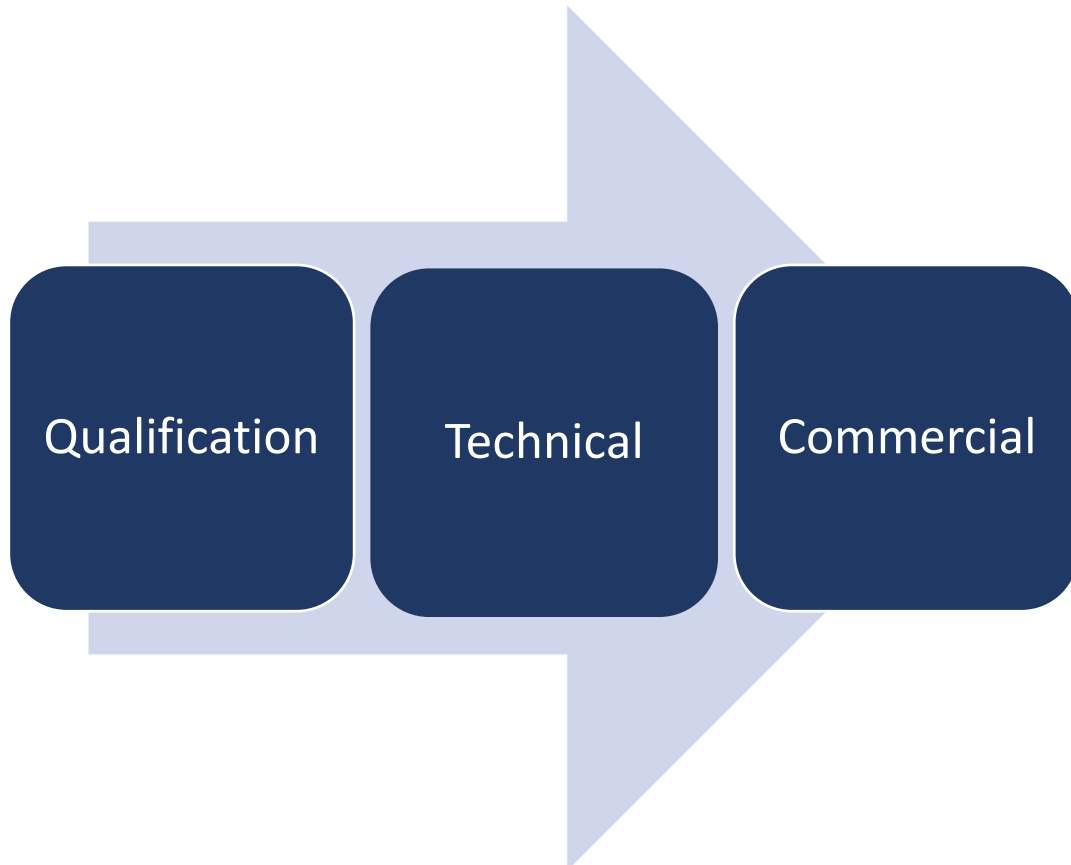


Employment law considerations when bidding for contracts with the public sector including:

- > Introduction to public sector tendering
- > How your working practices are scored
- > The Real Living Wage v National Minimum Wage
- > Policies regularly requested in tender documentation
- > Useful resources for your business

How your bid is evaluated

The invitation to tender (ITT) is made of 3 key stages



Qualification (selection)

- > Any pass/fail requirements to progress to scored technical stage including Single Procurement Document, minimum turnover, relevant experience

Technical (quality)

- > Specific scored questions relevant to contract being commissioned e.g. methodology
- > Additional ethical questions are in this section – which is what we will be discussing today

Commercial

- > Pricing element (Bill of Quantities, pricing schedule etc)

Evaluating working practices



Introduction



- > Scottish Government published the [Sustainable Procurement Duty](#) which promotes fair working practices, sustainability, environmental issues, equality and diversity, and fair and ethical trading.
- > This provides that before a public body can buy anything they must think about how it can improve the social, environmental and economic wellbeing of the area in which it operates
- > Evaluation of these are included in the technical evaluation and can be done in a number of ways which we will explore

What is fair work?



> Taken from the [Fair Work Convention](#), which the Scottish Government endorses:

“Fair Work is work that offers all individuals an effective voice, opportunity, security, fulfilment and respect.

It balances the rights and responsibilities of employers and workers.

It generates benefits for individuals, organisations and society.”

Fair Work First Criteria



- > The Scottish Government published [Fair Work First](#) which is their flagship policy governing fair work across labour market in Scotland in relation to contracts being awarded by the public sector.
- > Successful bidder expected to commit to 7 FWF Criteria during duration of contract
- > Local authorities may monitor throughout contract by asking for evidence

appropriate channels for effective voice, such as trade union recognition

investment in workforce development

no inappropriate use of zero hours contracts

action to tackle the gender pay gap and create a more diverse and inclusive workplace

providing fair pay for workers (for example, [payment of the real Living Wage](#))

offer flexible and family friendly working practices for all workers from day one of employment

oppose the use of fire and rehire practices.

How are working practices scored?



- > Scored question (not just pass/fail)
- > Score contributes to your overall technical (quality) scoring
- > Structure your answer round the 7 FWF criteria

Fair Work First (xx%)

Question - Please describe how you will commit to adopting Fair Work First for workers (including any agency or sub-contractor workers) involved in the delivery of this contract.

This should include current and planned actions that show how you will embed these practices during the lifetime of this contract.

Answers should include tangible and measurable examples and should also describe how you will report on, and demonstrate progress to, the public body during the lifetime of the contract.

Real Living Wage



- > Different to the National Living Wage!
- > In many procurements this will be mandatory and not paying the RLW will exclude you from progressing in the tender process
- > Don't have to be accredited by the Real Living Wage Foundation, only pay their rates

Explaining UK Wage Rates

	THE MINIMUM WAGE <small>Government minimum for under 23s</small>	NATIONAL LIVING WAGE <small>Government minimum for over 23s</small>	REAL LIVING WAGE <small>The only wage rate based on what people need to live</small>
WHAT IS IT?	£9.18	£9.50	£9.90 across the UK £11.05 in London
IS IT THE LAW?	Statutory	Statutory	Voluntary
WHAT AGE GROUP IS COVERED?	21 and older	23 and older	18 and older
HOW IS IT SET?	Negotiated settlement based on recommendations from businesses and trade unions	A % of medium earnings, it aims to reach 66% of median earnings by 2024.	Calculation made according to the cost of living, based on a basket of household goods and services
IS THERE A LONDON WEIGHTING?	No London Weighting	No London Weighting	Yes - Separate higher rate for London

Real Living Wage in the Invitation to Tender (ITT)



- > **Question:** Tenderers are asked to confirm that they will pay staff that are involved in the delivery of the contract (including any agency or sub-contractor staff) directly involved in the delivery of the contract, at least the real Living Wage.

Answer : Yes/No

Please note that tenderers who fail to answer “Yes” to this question will not have their tender considered further or proceed to the Price/Quality ratio calculation.”

Modern slavery in public procurement



- > Forced labour is found across the UK in sectors characterised by low-skilled, low-paid labour (like food processing, construction, hospitality) and among flexible, temporary (commonly agency) workers.
- > Bidders can be excluded at selection stage on modern slavery grounds e.g. in SPD 'Bidders will be required to adhere to, and fulfil all obligations relevant under the Human Trafficking and Exploitation (Scotland) Act 2015 and the Modern Slavery Act 2015'
- > Modern slavery statement or question can be included in the technical/quality evaluation and bidders must agree to comply with the conditions:
 - Paying minimum wage; having a grievance procedure; hiring migrant employees directly where possible; supplying employment contracts in a language worker can understand; no fees for recruitment direct or indirectly associated with travel or processing documents

Commonly requested policies



Asked for in technical/quality evaluation:

- > Environmental policy
 - > Code of ethics/ human rights policy
 - > Equality & diversity policy
 - > Health & Safety policy
 - > Information Security policy
 - > Quality policy
- > If any of these are requested, you would be required to submit a copy alongside your bid. These are usually pass/fail

Useful resources



- > Supplier Journey – Outlines different procurement routes and gives guidance on how to complete various steps. Glossary of commonly used procurement terms. Support for new suppliers who want to begin bidding on public sector contracts. Useful document library with checklists and instructional videos.
- > Supplier Development Programme – User friendly site with policy templates, free training, meet the buyer events, how to guides.

Any questions?



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Thank you



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