

Procurement Reform Bill Consultation

Introduction

The Scottish Government plans to introduce a Procurement Reform Bill as part of its legislative programme for 2012-13. It has launched a consultation and aims to introduce the Bill next year.

The Scottish Government says that the Bill will: “establish a national legislative framework for sustainable public procurement that supports Scotland’s economic growth by delivering economic, social and environmental benefits, supporting innovation and promoting processes and systems which are transparent, streamlined, standardised, proportionate, fair and business-friendly.”

Context

The SNP’s 2011 manifesto promised a Sustainable Procurement Bill to “make clear the legislative framework for procurement decisions and support the greater use of social and environmental benefit clauses”, arguing this would build on ways in which community benefit has been embedded in a range of projects such as the Commonwealth Games contracts and the new Southern General Hospital project in Glasgow.

UNISON is disappointed that the focus has moved considerably from the original intentions, as the Scottish Government seeks to use the Bill to make procurement processes and systems more “business-friendly”. The aim is clearly to placate the small business lobby.

Trade unionists have long argued for procurement of public contracts to be used more effectively to greater benefit, including to support jobs, apprenticeships, decent employment conditions and a range of ethical, moral and environmental objectives. Examples include contract clauses that specify the use of Fair Trade products, or low carbon footprints or payment of the Living Wage.

Main proposals

The Consultation divides the proposals into six parts, with a range of measures to make it easier for business, especially newer businesses, SMEs and the third sector to access public contract and sub-contracting opportunities. Proposals include requiring public bodies to use a single online portal for advertising/awarding contracts above a certain threshold, requiring them to advertise sub-contracting opportunities and introducing a general duty on public bodies to conduct procurement in an “effective, transparent and proportionate manner”. The Bill will also aim to “make smarter use of public procurement to encourage innovation and growth” and may introduce

KEY POINTS:

- **The Scottish Government is consulting on the Procurement Reform Bill**
- **The SNP 2011 manifesto promised a Sustainable Procurement Bill but the new proposal is weak on sustainability, focusing more on ‘business-friendly’ processes**
- **However, it is a good opportunity to strengthen ways in which procurement can encourage important economic, social and environmental benefits, longstanding trade union priorities. This should include extending the Living Wage to contractors.**



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measures for dealing with inappropriate conduct/poor performance.

The consultation seeks views on whether all the proposals should apply to the procurement of health and social services, whether some should not apply and whether the Bill should include additional provisions which apply only to such procurement. (Ministers may consult further on this as part of new Scottish Procurement Regulations which would transpose the revised European Commission Public Procurement Directive into Scots law. The Commission accepts health and social services are of limited cross-border interest so should be subject to specific and much simpler rules.)

The consultation asks whether major public contracts should be required to consider community benefit clauses and extending these to contractors. It looks at promoting training and job opportunities (often for under-represented groups, such as young people, women, long-term unemployed and people with disabilities), apprenticeships, assisting supported businesses and other ways to “steer the market in a more environmentally and socially responsible direction”.

One question is whether public sector bodies should be placed under a general duty to demonstrate the extent to which what is being procured will promote or improve the economic, social, health and environmental well-being of the relevant area.

The Scottish Government asks, in an annexe, whether procurement should be used to encourage contractors to pay the Living Wage. It does not propose legislation, arguing that any requirement on contractors is unlikely to be compatible with EU law. (John Park MSP is currently consulting on his proposed Living Wage (Scotland) Bill, which would require payment of the Living Wage to private sector employees working on public sector contracts.)

UNISON approach

We strongly support using procurement for social, economic and environmental benefit. We believe it can and should be used to encourage employers to pay the Living Wage and have explained why in our Scottish Living Wage Briefing (link opposite).

We agree with Stop Climate Chaos Scotland that the Bill as proposed is weak on sustainability and is a shift away from the intention set out in the SNP manifesto. Existing guidance and policy on sustainable procurement is backed up by the public bodies duties established by the Climate Change (Scotland) Act 2009. Public bodies must act in ways they consider most sustainable. The proposals do not strengthen the existing position in terms of environmental benefit. They must do so to ensure that public sector procurement contributes to meeting Scotland’s world-leading legally binding climate change targets.

We will also be proposing, among other measures, that the Bill can be used to address tax dodging. Contractors that use tax havens should not be awarded public sector contracts. Our submission will look at an initiative on this under way in the French ‘Ile de France’ administrative region, covering Paris.

Further info:

- **Consultation**
www.scotland.gov.uk/Publications/2012/08/3295
- **Our Scottish Living Wage Briefing**
www.unison-scotland.org.uk/briefings/e-briefing_ScottishLivingWage_June2012.pdf

Action for branches:

- **Provide the Bargaining & Campaigns Team (by 15 Oct) with any comments and examples of relevant local work to be fed into the UNISON consultation response**
- **Support [Scottish Living Wage campaign](#) and trade union work on procurement**



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