

Developing a Fair Work practices criterion

Please consider this alongside the [Best Practice Guidance on Develop Documents](#), and other [Tools](#).

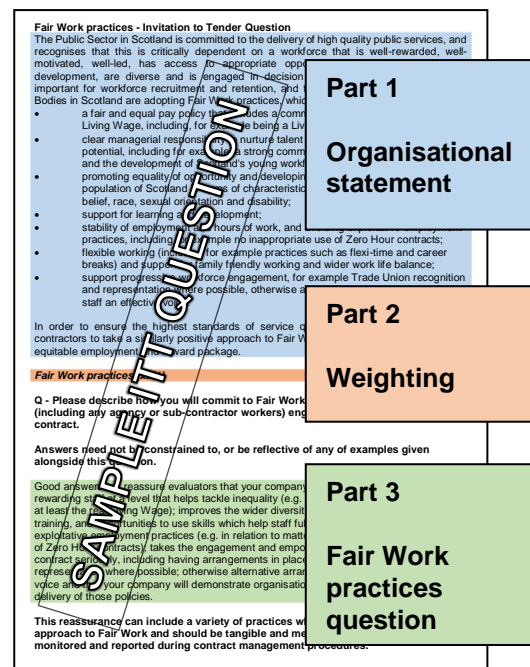
This guidance helps a public body consider how to structure and adapt a Fair Work practices criterion to suit the needs of the contract.

The key considerations will be informed by the outcomes of pre-market engagement and the commodity / service strategy checklist or flowchart.

A sample Invitation to Tender question is contained in the [Statutory Guidance](#), this must be adapted on a case-by-case basis.

A question should be structured in 3 parts:

- Part 1 – Organisational statement;
- Part 2 – Weighting; and,
- Part 3 – Fair Work practices question.



Part 1 – Organisational statement

Purpose: To describe to suppliers the focus of a public body's organisational Fair Work priorities and how it promotes Fair Work practices through its contracts.

Note: This statement is unlikely to change for each contract, but should be reviewed periodically to remain in line with organisational and commodity / service priorities.

Key considerations:

- The statement should reflect what is included in the public body's policy statement on paying the real Living Wage and promoting Fair Work practices contained in their Organisational Procurement Strategy.
- The statement is a reflection of the public body's own approach. It is not a checklist of what suppliers should include in their response. See a suggested statement below to make this clear:

This is a description of the public body's focus on Fair Work practices, it is not necessarily relevant to this specific contract. Suppliers must respond with their package of Fair Work practices that they consider to be relevant to the contract.

- The statement should include any organisational accreditations the public body holds or is working towards, or priorities that will impact on the way a public body delivers its contracts, for example, [Living Wage Accreditation, or Investors in People](#).
- The Scottish Government considers paying the real Living Wage as part of a package of Fair Work practices to be a significant indicator of an employer's commitment to Fair Work. The organisational statement should therefore always

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include a statement on a public body's approach to fair pay and equal pay, for example:

Public body A has adopted Fair Work practices, which include:

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

Part 2 – Weighting

Purpose: To identify to suppliers the relative proportion of a Fair Work practices criterion alongside other relevant criteria.

Note: This will change on a contract-by-contract basis

Key considerations:

- The weighting of a Fair Work criterion must be considered on a case-by-case basis and reflect the relative impact Fair Work practices can have on the quality of the service delivery, the works performed or the goods supplied.
- Weighting must be proportionate and ensure the appropriate balance between the quality and cost / price of the contract, taking care not to negatively affect the quality of the contract to be performed.
- It is possible to develop an approach to weighting by commodity / service type. If this has been done, this should be considered as a starting point to be adapted, as necessary, to ensure relevance on a contract-by-contract basis.

Part 3 – Fair Work practices question

Purpose: To help suppliers understand how Fair Work practices can impact on the quality of the contract.

Note: This will change on a contract-by-contract basis.

Key considerations:

- Information Sheets on What is Fair Work?, What is the real Living Wage?, and What are Fair Work Practices? are available in the [Toolkit](#) and can be shared with suppliers to help them understand what Fair Work means.
- Describe for suppliers how Fair Work practices might impact on aspects of the performance of the contract, for example suppliers could be asked to describe those practices which could support the continuity of care or customer engagement.
- Invite suppliers to provide an explanation of what Fair Work practices they will adopt supported by relevant examples and extracts of evidence. This should describe practices which go beyond the legal minimum requirements of an employer and describe policies and practices they will put in place to effectively implement their legal obligations.
- Highlight areas of poor working practices that you would expect to see addressed in a good response, for example, low pay, inappropriate use of zero hours contracts, gender imbalance or staff lacking an effective voice.

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- The Scottish Government considers the payment of the real Living Wage to be a significant indicator of an employer's commitment to Fair Work practices and the question should therefore always include a statement to this effect, see suggestion below:

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 real Living Wage)

- It is important to be clear, that suppliers' responses must not be constrained to examples provided in the question. See suggested statement below:

Answers need not be constrained to, or be reflective of any of examples given alongside this question.