

Committees:	Dates:
Finance Committee Policy & Resources Committee	12 May 2015 28 May 2015
Subject: Living Wage – an updated Procurement Policy	Public
Report of: The Chamberlain	For Decision

Summary

This report sets out a number of possible revisions to the City of London's 2012 Living Wage (LW) Procurement Policy and presents a new draft 2015 policy for approval.

The new policy is designed to make the City's processes more efficient and consistent and to ensure compliance with the terms of its UK Living Wage (LW) Employer Accreditation Licence awarded in October 2014.

The suggested policy revisions for consideration are summarised as follows:

- a) Require the payment of LW across contracts (where it is lawful to do so) by requiring suppliers to provide a single compliant bid, based on the assumption that the LW is likely be paid to secure the benefits set out in paragraph 28, with the costs and benefits of doing so clearly set out.
- b) To move to a fixed date - suggested 1 April 2016 - at which all contracts would be compliant with the payment of the LW (compared to current policy of phased implementation depending on the renewal dates of contracts which delays full implementation to 2019). This would avoid comparability and reputational issues arising, as we have seen recently with the Barbican Centre security and cleaning contracts. The two contracts impacted would be home care (currently due to be compliant by March 2017) at an estimated cost of £22-44k and refuse and street cleansing, due to be compliant in 2019, which could involve zero cost or up to £125k (subject to further investigation on treatment of a regular payment that would raise wage above LLW) in 2016/17. The total cost of up to around £170k would be met from central funding.
- c) To agree a standard uplift date for all new/renewed contracts of 1 April for subsequent increases in LW (following LW announcement in prior November) and consideration given to contract variation to incorporate consistent uplift date in existing contracts.
- d) The policy is revised to reflect the terms of the City of London's UK LW Employer Accreditation Licence.

Recommendations

The **Policy and Resources Committee** is asked to:

- a) decide whether to require the payment of LW across contracts, consistent with the legal advice in paragraph 28; and
- b) approve the new City of London Living Wage Procurement Policy 2015 as outlined in summary revisions a) to d) and detailed in Appendix 2.

The **Finance Committee** is asked to:

- a) decide whether the City should bring forward the start date for payment of LW for remaining contracts to 1 April 2016 at an estimated cost of up to £170k in 2016/17 to be met from central funding; and
- b) approve the procedures for authorising additional central funding for the initial LW uplifts for new or existing contracts.

Main Report

Background

1. On 8 March 2012, the Court of Common Council agreed to support the principle of Living Wage (LW).
2. In July 2012 Policy and Resources, Establishment and Finance Committees approved a variety of new policies relating to LW including procurement and funding.
3. In relation to procurement it was agreed that any report to Finance Committee seeking approval “.....*should set out for Members the wider considerations and benefits that should be taken into account as well as the financial implications. These should reflect the benefits that the tenderer has included in their submission as well as reflecting the intentions of the LW set out earlier in this paper.*”

Current Position

4. Since 2012 the City has adopted a phased approach to making a decision on implementing LW into contracts on a case by case basis at the time of new contract award or contract extension.
5. In recognition of this work and a commitment to continue the phased implementation of LW into its contracts the City sought and received Living Wage Employer (LW) accreditation status from the Living Wage Foundation on 17 October 2014.
6. The terms of the City’s continued accreditation are;
 - I. The City will continue to pay the Living Wage for its directly employed staff.
 - II. The City will undertake a phased implementation of the Living Wage for contractors and sub-contractors in accordance with agreed milestones

set out in the City's application and based on when new in scope contracts are due to be awarded.

- III. The City will ensure to the extent permitted by law that any of its contractors or sub-contractors pay London Living Wage (currently £9.15 per hour) to those employees based in Greater London and UK Living Wage (currently £7.85 per hour) to those employees based outside Greater London.
- IV. The annual Living Wage rates are announced on the first Monday of November each year. All accredited employers including the City of London and its contractors must implement the new rates as soon as possible and within 6 months at the latest.
- V. The City will provide the Living Wage Foundation with all information required to confirm that it is complying with the above terms.

Possible Policy Revisions

7. The City's LW Procurement policy is now three years old and the opportunity exists to make procedures more efficient and consistent in light of lessons learned to date.
8. In the first instance Members could decide to require the payment of LW on all current and future service contracts, consistent with the legal advice set out in paragraph 28.
9. Secondly Members could decide to pay LW by a fixed date, such as April 2016, within all existing in scope contracts. This would apply for example to the Refuse and Street Cleansing contract, which will only come in scope at contract renewal in 2019. It is not clear that the late renewal date of the refuse contract was apparent at the point of accreditation.
10. Such an approach would mean that the City reaps the service delivery and reputational benefits of fully implementing its policy sooner than it would otherwise do so.
11. The existing policy would need to be amended to provide greater clarity and direction regarding the City's policy priorities to service providers bidding for in scope LW contracts to the extent permitted by law.
12. The current LW Procurement policy requires all contracts regardless of value, with LW considerations to be approved by Finance Committee and that every report set out a business case for the payment of LW.
13. This requirement is more stringent than for non LW contracts and it is now suggested that committee approval threshold is only required above a threshold of £2 million (City Procurement Regulation 10), below which approval will be delegated to the Chamberlain.

14. The revised policy would only apply to employees providing services to the City for two or more hours of work every week for eight or more consecutive weeks. It will not apply to short term, one-off services.
15. A new draft procurement policy including the proposed revisions is attached in Appendix 2.

Financial Considerations

16. Appendix 1 includes all existing City of London contracts that do not currently include LW and for which approval for an uplift has yet to be granted. Agreement should be reached on the application of the LW uplift to Supporting Living contracts by July 2015 at a cost of between £290-590k. Additional costs of up to £368k can be contained within the existing provision for LW. The additional cost of bringing forward the LW uplift in the Homecare contract from March 2017 would be up to £45k in 2016/17 and the for refuse and street cleansing (due for renewal in 2019) up to a maximum of £125k. This additional total cost of up to £170k would be met from central funding and factored into the budget planning process for 2016/17.
17. It should be noted that the cost liability is estimated due to the complexity of multiple individual contracts and a more precise cost will be developed.
18. The City will benefit from greater clarity about the process for adjusting pay rates when Citizens UK revises the LW rates every November. This will avoid delays and mitigate potential problems with contract management and risks to the City's Living Wage Accreditation Licence and the associated service delivery issues and reputational damage that may be caused.
19. All recommendations for additional central funding for LW for new or existing contracts shall be supported with a clear benefits paper.
20. In scope contracts will continue to be funded principally by the supplier or local risk budgets. However, in the case that new LW contracts result in increased costs, the proportion of the increase directly attributable to LW will be centrally funded.
21. Additional central funding will either not be allocated if the additional costs can be fully met by contractual efficiencies or only partially allocated if contractual or procurement efficiencies can make a contribution.
22. Any additional central funding above local risk budgets will be solely for the initial uplift of pay rates to the LW at the start of the new contract. Any subsequent annual inflationary increases during the life of the contract shall be met by contractual efficiencies.
23. There shall be no additional central funding for second generation contracts and beyond where pay rates are already inclusive of LW.
24. A provision of £800,000 has been included in the 2015/16 budget for the additional costs of LLW. This was split City Fund - £500,000, City's Cash - £250,000 and Bridge House Estates - £50,000. Up to £432,000 has already

been committed for the recently approved extension to the corporate security contract – with the exact sum being dependent upon how much, if any, of the additional costs can be recovered through the service charges of investment property lessees. Should the remaining provisions in each of the funds - at least £368,000 in total (more if there is any recovery through service charges) - prove insufficient for the in-year additional costs of future contracts, a request (or requests) will be made for an allocation from the Finance Committee's contingencies.

Contract Management Change Considerations

25. Officers shall ensure that all contracts which are in scope for LW include appropriate contract clauses to ensure that pay rates are adjusted in accordance with the annual November Living Wage review.
26. The City's Contract Managers shall ensure that contractors implement the revised rates and any revisions to the contract are completed within six months of the new rates being announced. It should be further considered to standardise this process so that all affected contracts are uplifted in a consistent way, with an effective date agreed, but this might require a contract variation to existing contracts.

Corporate and Strategic Implications

27. The proposals support the City's Responsible Procurement and City Together Strategies which recognise that not everyone has equal chances in life and therefore it is important that equality of opportunity is actively promoted. They are also aligned with the "Supports our Communities" theme which provides that *"all of the City's communities should enjoy equal opportunities that will enable them to work towards a better life for themselves and their families and to share in improving quality of life and wellbeing"*.

Legal Implications

28. S.17 of the Local Government Act 1988 provides that a local authority may not, when awarding a contract, take into account "non-commercial considerations". S.17 applies to the Corporation in its capacity as a local authority. Non-commercial considerations include the terms and conditions upon which the contractor employs its staff e.g. remuneration. It is therefore unlawful to fix a rigid policy to require contractors to pay LLW in all circumstances.

There are two principal exemptions to this prohibition.

1. Non-commercial considerations may be taken into account to the extent that they are relevant to achieve the duty of best value (i.e. the duty to secure continuous improvement with regard to a combination of economy, efficiency and effectiveness).
2. Non-commercial considerations may be taken into account to the extent that the Corporation considers it necessary to comply with our duties under the Public Services (Social Value) Act 2012 i.e. the duty to carry out procurement

with a view to improving the economic, environmental and social well-being of the area.

Thus, in order to require that a contractor pays LLW the Corporation must be satisfied that doing so is likely to secure continuous improvement (with regard to a combination of economy, efficiency and effectiveness) or the improvement of the economic, environmental or social well-being of the City. The proposed process is designed to secure compliance with these requirements.

Appendices

Appendix 1 – Update – Estimated financial impacts City of London Contracts that do not currently include Living or London Living Wage

Appendix 2 – Draft City of London Living Wage Procurement Policy April 2015

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City of London Contracts that do not currently include Living Wage

Contract	Status	Estimated Annual Costs (LW and LLW uplift)
<p>Supported Living Multiple (up to 200) individual contracts to be renewed by 31/3/2016 (Department of Community & Children's Services)</p>	Work is being undertaken jointly by officers from DCCS and City Procurement to identify the potential costs	£290k to £590k
<p>Homecare Multiple individual contracts to be renewed by 31/3/2016 (Department of Community & Children's Services)</p>	Work is being undertaken jointly by officers from DCCS and City Procurement to identify the potential costs	£22k to £45k
<p>Refuse and Street Cleansing Date for renewal 2019 Contracts (Department of Built Environment)</p>	Existing contract held by Amey Officers from DBE and City Procurement negotiating extension the negotiation will include a workforce review to determine whether some employees are paid less than LW/LLW	£0-125k

DRAFT PROCUREMENT POLICY FOR LIVING WAGE AND LONDON LIVING

WAGE CONTRACTS 2015

Background

1. The City of London Corporation (CoL) is an accredited Living Wage employer. The Living Wage is an hourly rate set independently and updated annually and is calculated according to the basic cost of living in the UK. There are two rates of Living Wage: one for those based in Greater London (London Living Wage (LLW)) and another rate for the rest of the UK (UK Living Wage (LW)).
 2. The current hourly rates for LLW and UK LW can be found here: <http://www.livingwage.org.uk/calculation>
 3. Employers choose to pay the LW on a voluntary basis as opposed to the national minimum wage which is a statutory obligation.
 4. Payment of the LW has many advantages and these include:
 - Staff retention
 - Reduction in absenteeism
 - Ethical employment practices
 - Reduction in poverty affording people the opportunity to provide for themselves and their families
 5. *For the City of London, LW employer accreditation means the following:
 - The City will continue to pay the LW for all directly employed staff.
 - To move to a fixed date - suggested 1 April 2016 - at which all contracts would be compliant with the payment of the LW (compared to the 2012 policy of phased implementation depending on the renewal dates of contracts which delays full implementation to 2019).
- *This policy statement will be amended if members decide to implement LW/LW collectively in all contracts.**
6. The City will ensure to the extent permitted by law that any of its contractors or sub-contractors pay LLW to those employees based in Greater London and UK LW to those employees based outside Greater London. This provision applies to employees providing services to the City for two or more hours of work every week for eight or more consecutive weeks.
 7. The annual LW rates are announced on the first Monday of November each year. All accredited employers including the City of London and its contractors must implement the new rates by 1 April the following year.
 8. The City will provide the Living Wage Foundation with all information required to confirm that it is complying with the above terms.
 9. The City's policy for undertaking LW and LLW Procurement is set out below

Preparing for a Procurement

10. Officers will need to undertake an assessment in conjunction with City Procurement when planning the procurement of service contracts to determine whether the workforces of the new contractors are likely to be paid below LW and LLW.

11. All types of services contracts may be subject to the City's policy but the following types of contracts awarded by the City may have low paid workforces;
 - Catering
 - Security
 - Cleaning
 - Car Parks Management and Operations
 - Social Care
 - Temporary Staff
 - Casual and seasonal staff
 - Grounds maintenance
12. The two key questions to determine whether or not a contract is in scope for LW/LLW are as follows;
 - i. Are the current or new contracts either paying or likely to pay rates below LW/LLW?
 - ii. Do the services required apply to contractors' employees providing services to the City for two or more hours of work every week for eight or more consecutive weeks?
13. If the answer to both questions is yes the contract is likely to be subject to the provisions of this policy
14. Having determined that LW and LLW considerations apply, officers should consult with City Procurement who will undertake procurement in accordance with the policy.

Funding

15. In scope contracts will continue to be funded principally by local risk budgets. However, in the case of first generation LW or LLW contracts that have never previously paid LW or LLW, and the winning tender for the new contract results in increased costs above the approved baseline estimate, and those costs cannot be met by efficiencies, the proportion of the increase directly attributable to LW or LLW will be centrally funded.
16. Any additional central funding above local risk budgets will be solely for the initial uplift of pay rates to the LW or LLW at the start of the new contract. Any subsequent increases during the life of the contract arising from the annual Living Wage Foundation November review shall be funded from local risk budgets and contractual efficiencies.
17. The same funding approach used for new contracts will be used if the pay rates of an existing contract are uplifted to LW or LLW part way through the contract term. In these cases additional central funding will be provided to uplift pay rates to the prevailing LW/LLW pay rate. The funding will solely be for the initial uplift, any subsequent cost or LW/LLW increases in the remainder of the contract must be met from local risk budgets, efficiencies or a combination of both.
18. All requests for additional central funding for LW or LLW for new or existing contracts shall be presented in the form of a business case for approval by the Chamberlain, from the appropriate Procurement Category Board Chairman supported by Senior Category Managers from City Procurement.
19. Additional central funding will either not be allocated if the additional costs can be fully met by contractual efficiencies or only partially allocated if contractual efficiencies can make a contribution.
20. There shall be no additional central funding for second generation contracts and beyond where pay rates are already inclusive of LW or LLW.

Inviting and Evaluating Tenders

21. Invitation to tender documents should include a clear statement of the City's LW Policy.
22. Bidders will be advised that the City require their best value tender to include LLW (or LW if appropriate) and be supported with an appropriate business case.
25. Where a LW/LLW contract is awarded the contract should include an appropriate contract clause to ensure that the contractor commits to paying LW/LLW and that clear procedures for updating the LW/LLW are set out.

Contract Lettings Approvals

26. The approval thresholds for contracts lettings reports for LW/LLW contracts are the same as those in the City's Procurement Regulations January 2014 (Regulation 10) or as amended.

Contract Management

27. City Procurement shall ensure that all contracts which are in scope for LW or LLW include appropriate contract clauses to ensure that pay rates are adjusted in accordance with the outcome of annual Living Wage Foundation November LW/LLW review.
28. Contract Mangers shall ensure that contractors implement the revised rates, offset any increases against efficiencies (where applicable) and agree any revisions to contract charges promptly and certainly within six months of the new rates being announced and by 1 April for new/renewed contracts.
29. The LW and LLW uplift procedures should be viewed as an integral part of the contract and compliance with the City's LW policy and Accreditation Licence.

**City Procurement
30 April 2015**