

Public Sector Equality Duty

January 2010

Introduction

The Federation of Small Businesses is Scotland's largest direct-member business organisation, representing almost 20,000 members. The FSB campaigns for an economic and social environment which allows small businesses to grow and prosper.

We are grateful for the opportunity to submit our comments on the *Public Sector Equality Duty* consultation and will focus our response on section six, which covers procurement issues.

Procurement

The FSB in Scotland has worked hard in recent years to ensure increased access for micro and small businesses to public sector contracts.

Internal FSB research shows that as many as three quarters of small businesses rarely or never bid for public sector contracts and around half say that the process of tendering takes more time than their business can allow due to the large number of conditions that have to be met and forms that must be filled in.

While the equalities agenda is an important one, our concern is that another onus on small businesses to comply with a set of equalities criteria would not encourage small businesses to engage with the public sector and could potentially act as another barrier to access.

Proportionality is the key word here. The FSB takes the view that equality compliance should lie with the prime contractor and only apply to large value contracts where those criteria are appropriate. Equality compliance is more likely to have the desired impact and outcome in large scale contacts, as opposed to low value contracts where small businesses are more likely to tender.

The FSB do not believe that the proposals for an equality standard have been thought through. There has been no standard proposed so far that would be both useful to large businesses and also attainable for micro and small businesses. In using existing commercial standards, we would also sound a note of caution. We are concerned that the cost of these standards will exclude the smallest businesses from public sector procurement by adding another cost and hurdle before getting to a bidding process they may not win. In Health and Safety, the use of commercial standards to show compliance has led to public procurers using a range of different standards and not

accepting alternative standards offered by different bodies. We have members that have acquired over five different health and safety standards, all requiring the business owners time, money and essentially the same information, just to bid for different public sector contracts. This issue has arisen in the Health and Safety sphere; we would not wish to go through a similar process with equalities in the future.

The FSB would also oppose the idea of excluding tenders where they have been guilty of breaching anti-discrimination legislation in the past. This proposal would exclude many Government agencies from taking part in the tendering process. Many businesses have been involved in equalities cases and the FSB does not believe that past cases are necessarily a fair reflection on the current employment practices of the business.

While we would support the exclusion of businesses that persistently discriminate from tendering, one employment tribunal claim should not in our view disqualify a firm from procuring public contracts. At the very least, a disqualification must be time limited so that a business that disciplines the line manager in question or that changes hands is not punished forever.

Conclusion

The FSB does not agree with the premise that public money should be used as a lever to promote equality outcomes. Quality, value for money, and the impact on the economy should be the prime objectives when deciding who a contract should be awarded to. The Scottish Government should be focusing on helping our smallest businesses to access these contracts, rather than putting more barriers in their way.

The FSB would like to see an economic assessment of how much these proposed new regulations would affect the private sector and the likely impact on existing procurement practices.

For further information on any of the points raised in this submission, please contact Martyn McIntyre, Policy Officer, on martyn.mcintyre@fsb.org.uk or 0141 221 0775.