

# Procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales

## SUPPLEMENTARY QUESTIONS

### United Workers Union

#### 1. How do you ensure that undercutting legal wages and conditions is not the basis of winning tenders on price?

A number of recommendations made in our submission will help to ensure that undercutting workers legal entitlements is not the basis of winning contracts.

For contracts for labour dependent services such as cleaning and security it is essential, prior to awarding any contracts, that procuring entities calculate the minimum legal labour costs required to deliver the scope of the contract with the required specifications. Contracts should not be awarded to vendors that bid prices below this amount (considering also the markup on top of labour for contract management, other on-costs and profit).

It is possible to calculate a labour baseline cost based on a breakdown of the intended work patterns, the total aggregate hours per the contract specifications, and the inclusive hourly legal minimum labour costs (per the NES, relevant modern award, superannuation guarantee, workers compensation plus payroll tax).

The Cleaning Accountability Framework's Pricing Schedule is designed to perform this function for entities procuring commercial cleaning services. Property owners or procurers of cleaning services must complete the CAF Pricing Schedule to demonstrate that their labour costs and on costs are sufficient to meet their obligations (under workplace, tax and super laws), and that the contract price meets or exceeds minimum industry benchmarks. The CAF Pricing Schedule also requires contractors to provide a breakdown of contract hours, so that they can demonstrate there are sufficient hours in the contract to ensure cleaners have fair and safe workloads, and that productivity rates fall within reasonable industry benchmarks.

It is not overstating the case to say that the CAF Pricing Schedule is a transformative tool for the industry – it provides complete transparency of wages and overheads, hours worked and productivity rates, and enables a fair and consistent assessment of tenders. Through CAF certification, the use of the Pricing Schedule has led to contracts being priced fairly, and has removed pressure on contractors to cut hours, underpay cleaners and drive unreasonably high and unsafe workloads.

The union strongly urges the NSW government to require CAF building certification or portfolio rating/certification as condition of leasing building space from private owners. A similar approach should also be taken by government agencies when they contract directly for cleaning and security.

In addition to putting in place measures to ensure that labour costs, on costs and productivity rates fall within reasonable industry benchmarks prior to contracts being awarded, the union points to its recommendations regarding: the need to adequately fund contracts over their full-term and for any contract extensions (to allow for increases in award wages and the superannuation guarantee); the need for labour standards, *including above award rates of pay*, to be written into contracts for services so that they form part of the vendor's contractual obligation to fulfill; controls on the use of subcontracting; and the need for an independent agency to perform an investigative and enforcement function in relation to labour compliance by government contractors.

## **2. Can you explain further how the recommendations you've made specific to the security workforce would help improve safety in the industry?**

Tragically in NSW there have been a number of recent incidents, including the fatal stabbing of a security guard at Bondi Junction, in which security workers have been assaulted on the job. It is important to understand how the contracting practices of procuring entities, including government agencies can undermine safety on the job.

Practices such as sham subcontracting, that are endemic in the industry, create barriers to the formation of effective workplace health and safety structures including the constitution of health and safety committees and the election of HSRs. In addition, the common use of subcontracting within the delivery of contracts creates downward pressure on wages and conditions and leads to widespread breaches of workers' legal minimum pay and entitlements. Even when legally compliant wages are paid, rates are often insufficient to attract and retain a well-trained workforce and provide no incentives for workers to invest personally in the job and commit to taking on positions such as health and safety representatives that are integral to workplace safety.

In sum, the security workforce is often fragmented, insecure, disempowered and lacking appropriate and reliable channels to address safety concerns such as staffing, PPE, training and exposure to high-risk confrontations.

To help address these risks, the union points to its recommendations regarding above award 'safeguard' rates of pay, reform of the security providers panel and compliance with the standards established in the sham subcontracting 'Code of Practice' as a requirement for contracting with the NSW government.

## **3. Can you explain how the recommendations you've made relate to legislation already in place regarding modern slavery? Why are additional measures needed?**

The Modern Slavery Act, NSW (2018), and the Office of the NSW Anti-Slavery Commissioner created by it, serve an incredibly important function in combating modern slavery in the state. The Anti-Slavery Commissioner, James Cockayne, in a recent address to the NSW Anti-Slavery Forum, described the progress made in the field as promising but with room for improvement.<sup>1</sup> He also noted incidents reported to his office of suspected modern slavery in the cleaning and security sectors and that in NSW 80-98% of victims still go unidentified.<sup>2</sup>

The recommendations made by the union are intended to address the structural and economic factors within vulnerable industries that give rise to conditions of modern slavery.

Our recommendation to insource whole of government cleaning, including school cleaning, is one that the Anti-slavery Commissioner has supported.<sup>3</sup> The current model of privatised contracts has been consistently plagued with endemic issues of subcontracting and sham contracting

---

<sup>1</sup> [NSW Anti-slavery Forum - NSW Anti-slavery Commissioner speech - The state of NSW anti-slavery - 21 May 2024](#) (pg. 1)

<sup>2</sup> [NSW Anti-slavery Forum - NSW Anti-slavery Commissioner speech - The state of NSW anti-slavery - 21 May 2024](#) (pg. 4)

<sup>3</sup> [NSW Anti-slavery Forum - NSW Anti-slavery Commissioner speech - Let's be reasonable - 22 May 2024](#) (pg. 7)

arrangements, breaches of employment law and dangerous work conditions.<sup>4</sup> Transitioning to direct employment ends the business model of extracting profits by recruiting and requiring vulnerable workers to do more with less.

Similarly, our recommendations related to the procurement of cleaning and security services, where they are contracted, are intended to support responsible contracting practices and create decent secure jobs. Key to this are the measures to eliminate sham contracting and limit or transparently monitor subcontracting arrangements, and the contractually required payment of above award wages.

Additionally, the Cleaning Accountability Framework's (CAF) building certification and portfolio rating/certification programs, which the union recommends as requirements for government leased buildings, can be used by the commercial property sector as an effective anti-slavery mechanism. Achievement of CAF certification demonstrates that stakeholders have robust compliance mechanisms in place to detect workplace breaches, including instances of modern slavery, and importantly work through a multi-stakeholder process to investigate and remediate such breaches.

An academic assessment of the CAF model found that through the audit, worker engagement, tender controls and rectification steps embedded within the certification process, CAF has been able to improve the labour standards for cleaners in participating retail and commercial properties.

Data from CAF demonstrates the importance of proactively hearing from workers. 70% of labour violations identified by CAF come about through worker engagement compared to 30% from desk-based audits. The difference is particularly stark with respect to Workplace Health and Safety, and bullying, harassment and discrimination, for which 100% of violations were identified through direct worker engagement and would not have been detected in desk-based audits. This type of proactive worker engagement should be seen as a front-line effort to combat modern slavery in NSW.

#### **4. Can you explain how the recommendations you've made relate to legislation already in place with respect to industrial relations laws. Why are additional measures needed?**

The recommendations made by the union provide a more comprehensive framework to support safe, fair and decent jobs within the context of cleaning and security procurement compared to the broader industrial relations laws set by the Fair Work Act.

The union's submission addresses the complexities of attempting to bargain with employers operating under service contracts and the need for procuring entities, including government agencies, to establish contractually obligated labour standards, including above award rates of pay, that could not otherwise be achieved through bargaining alone.

Additionally, a number of the recommendations made by the union are intended to clarify the obligations of contractors and strengthen the enforcement mechanisms available to workers and their unions. The union points to two examples.

First, the job security provisions upon change of contract, as recommended by the union, provide a clear expectation for a new contractor to offer employment to existing workers, providing a degree of job security in circumstances where the contracted company at a site can frequently change hands

---

<sup>4</sup> For further details on the failures and current costs of the whole of government cleaning contracts, see the February 2024 report produced by the United Workers Union available at: [240201\\_SchoolCleaningReport.pdf \(unitedworkers.org.au\)](https://unitedworkers.org.au/240201_SchoolCleaningReport.pdf)

and where the transfer of business provisions in the Fair Work Act do not apply. Further, the creation of an obligation to offer employment within the service contract means there is a strong compliance incentive for the contractor taking over the work to ensure all existing workers are treated fairly and offered work that is commensurate to their previous role.

Second, and similarly, requiring security contractors to adhere to “same job same pay” obligations, per the terms of the sham subcontracting code of practice, means that this vital standard becomes a term of the vendor’s contract with government and enforceable as a breach thereof. This is particularly important in industries with narrow profit margins and labour as the key cost, making sham subcontracting a particularly significant risk. In addition, the inclusion of “same job, same pay” terms within the service contracts helps to remove any barrier to such a clause being included in an enterprise agreement with the employer. Where included in an enterprise agreement, workers and their union have a more direct pathway to enforcement, including at the workplace level as a first step, compared to pursuing an order from the Fair Work Commission under the recently enacted amendment to the Act.