
REPORT TO:	FINANCE AND MANAGEMENT COMMITTEE	AGENDA ITEM:	9
DATE OF MEETING:	17 th JUNE 2004	CATEGORY:	DELEGATED
REPORT FROM:	DIRECTOR OF CORPORATE SERVICES	OPEN	
MEMBERS' CONTACT POINT:	DAVID CLAMP (EXT 5729)	DOC:	
SUBJECT:	CODE OF PRACTICE ON WORKFORCE MATTERS IN LOCAL AUTHORITY SERVICE CONTRACTS	REF: s/pers/reports	
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: FM08	

1.0 Recommendations

- 1.1 That Members note the details of the report and the key requirements of the Code are observed in procurement matters that may involve the transfer of staff.
- 1.2 That local procedures to ensure compliance with the Code are developed jointly with the recognised Trades Unions.
- 1.3 That managers are given an awareness of the Code and its principles.
- 1.4 That the model clauses attached at appendix 3 are used as appropriate in any tender specification that is compiled.

2.0 Purpose of Report

- 2.1 To present details of the Code of Practice and its purpose for dealing with employment related matters during the procurement of council services.
- 2.2 To present details of standard clauses developed by the local government central bodies namely Public Private Partnerships Programme, IdeA and the Employers Organisation.

3.0 Executive Summary

- 3.1 Within the recently approved Procurement Strategy it was identified that the code of practice on workforce matters should be adopted to follow during any procurement exercise that could involve the transfer of staff. It is also a requirement to certify within our annual Performance Plan that individual contracts comply with the principles of the Code and this has been noted in our current plan.
- 3.2 Issued by the ODPM, the purpose of the Code is to prevent the existence of a 'two tier workforce' within public sector services and contracts. The Code will set out principles to be applied in service contracts that involve the transfer of staff from a local authority to a service provider or on a re-tender of contracts. It will ensure that all staff working on public service contracts are treated fairly and receive protection afforded by the TUPE regulations.

- 3.3 It also re-enforces the involvement of employee representatives and trades unions throughout the procurement process.
- 3.4 It offers an agreed procedure for employers and trades union to use for resolving disputes that may arise during staff transfers. The Alternative Dispute Resolution Procedure (ADR) is seen as the last resort to resolving these matters after internal procedures have been exhausted.
- 3.5 An overview of the Code provided as a list of frequently asked questions are attached as appendix 1. A proposed Resolution Procedure is attached as appendix 2.
- 3.6 A range of model clauses to be used in tender specifications have also been drafted to assist local authorities in meeting the requirements of Part 1 of the Local Government Act 1999 that set out the duty of best value. These are detailed in appendix 3.

4.0 Detail

- 4.1 The key elements of the Code are
 - That TUPE applies to all employee transfers unless there are genuine exceptional reasons for it not to apply
 - Pensions of transferee's will be protected either through broadly comparable pensions or admitted body status of the LGPS
 - New employees employed under the contract have to be employed on terms and conditions that are 'fair and reasonable and overall no less favourable than those of transferred employees'.
 - Any disputes arising from a contract should be dealt with internally before any reference to the agreed Alternative Dispute Resolution Procedure.
 - Monitoring arrangements have to be in place and the Council should ensure that any changes to employment terms are broadly consistent with existing members of staff.
 - Trade unions should be involved at key stages within the process.
 - The Audit Commission could make recommendations to the Council if they consider that an existing contract does not meet the principles of the Code.
- 4.2 Further action will be needed to develop working practices and procedures to ensure compliance with the Code and to avoid any disputes arising. Any manager involved with procuring services will need to have an awareness of the Code and its implications.
- 4.3 All service specifications and conditions for new contracts or re-tenders of contracts for services must adopt the principles of the Code. The Code will also need to be referred to in all advertisements for new contracts where staff maybe transferred with appropriate model clauses in the tender documentation for those contracts.
- 4.4 Arrangements will have to be put in place to ensure that the employment terms offered for existing and new staff are monitored effectively.

4.5 Trades Unions

- 4.6 At a meeting of the Joint Negotiating Group on 13th May 2004, the details of the Code and its implications were discussed. It was agreed that local procedures would need to be developed to raise awareness of the practical implications of the Code and to ensure the involvement of the appropriate Trades Unions during the relevant stages of subsequent procurement exercises
- 4.7 It was noted that these procedures would be developed jointly and discussed further at subsequent meeting of the Joint Negotiating Group.

5.0 **Financial Implications**

- 5.1 None directly arising from this report.

6.0 **Corporate Implications**

- 6.1 Adherence to the Code and the inclusion of standard clauses into tender documents will promote compliance with Part 1 of the Local Government Act 1999.
- 6.2 Adopting standard procedures and the involvement of the Trades Unions will ensure consistency in procurement exercises.
- 6.3 Whilst this does not change existing employment legislation in relation to TUPE (now planned for Autumn 2004) it does provide statutory guidance on how the Council can meet the duty of providing best value in all services provided.

8.0 **Community Implications**

- 8.1 The Code of Practice will prevent the existence of a 'two tier' workforce working on council services and achieve best value when procuring council services.

9.0 **Background Papers**

- 9.1 Local Government Act 1999
- 9.2 Code of Practice on Workforce Matters in Local Authority Service Contracts and contract clauses
- 9.3 Procurement Strategy
- 9.4 Minutes of Joint Negotiating Group 13th May 2004

