

Cabinet Office Code of Practice on Workforce Matters in Public Sector Service Contracts: Application Within DWP.

The DWP procurement community has adopted the above [Code of Practice](#). This Notice delves a little deeper into this issue by offering some tactical advice on the precise deployment of the Code in DWP commercial activity where the outsourcing of public sector services, or the re-tendering of an already-outsourcing service, is the subject matter.

OJEU and other advertisements of forthcoming tender exercises should mention the Code and advise respondents to the advert that tenderers will be expected to comply with it in any contract resulting from the procurement. The adverts might usefully mention how to access the Code via the Internet.

Supplier prequalification questionnaires must include a reference to the Code, and preferably an electronic copy of it, and it must be made clear to potential suppliers that a failure to indicated compliance with the Code within their response will result in their elimination from the procurement exercise. As the Code makes clear, this is a pass or fail issue and suppliers must be made aware of this reality.

Supplier tenders should provide further details of the precise way the Code will apply to transferees and new staff, and should provide evidence in support of the supplier's claim that employee conditions for new recruits will indeed be broadly comparable with those for transferees. It is recommended that specialist help be obtained from the [Government Actuarial Service](#) (enquiries@gad.gov.uk) to help with the comparison and to rule on the equivalence issue.

Tender evaluation criteria should include a factor for Code compliance, and tenderers who fail to demonstrate such compliance must be eliminated from further consideration. This may look rather 'black and white' but supplier compliance is Government policy so there is no room for shades of grey.

Contract management. The performance of the supplier against the Code must be considered throughout the contract duration, and it is fair to say that our contract managers do not have relevant experience to draw on. We will need to develop clear guidance, and possibly training, for contract managers in the type and depth of information needed to make accurate judgment regarding compliance; when to escalate; and the extent to which disputes should have a wider influence. The Code is clear that persistent failure to adhere to the Code can involve contract termination and can also lead to a transgressor supplier being barred from tendering for other Government contracts, so we need to be sure that we are on solid ground before taking any action. With this in mind, the Policy Team will liaise with OGC, Cabinet Office and others to develop recommended compliance monitoring which can then be built into contract management best practice guidelines. Policy Team may also develop a Briefing Workshop on the issue if there is a sufficient demand.

Summary

The advent of the Code is a major event, which will significantly alter the way we handle the outsourcing of DWP services and the re-entering of outsourced contracts. It brings what could be considered as a 'social' issue – the conditions of service of outsourced staff – very centre stage in the procurement and evaluation process, with the sanction of elimination from the exercise for non-compliant suppliers and the use of comparative

compliance data at tender evaluation. The Commercial Policy Team will make appropriate alterations to the Procurement Reference Manual over the coming few months.

It is recommended that the Code should be mentioned in any ongoing dialogue with suppliers of existing outsourced contracts, and their principle competitors, so that it does not come as a shock when the contract comes up for renewal.