

Unite response to Best Value and Procurement Workforce Matters in Best Value Authority Contracting Consultation

This evidence is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, not for profit sectors, local government, education and health services.

1. Introduction

- 1.1. Unite is the second largest union in local government and represents members working in a wide range of settings delivering services such as school canteens, refuse depots, social care, repair and maintenance services.
- 1.2. Unite welcomes the opportunity to submit comments to this consultation on workforce matters and the updating and re-issuing of the following guidance:
 - Valuing the Workforce (Section 2 of ODPM Circular 03/2003)
 - Handling of Workforce Matters in Contracting (Annex C of ODPM Circular 03/2003)
 - The Code of Practice on Workforce Matters in Local Authority Service Contracts (Annex D of ODPM Circular 03/2003), commonly referred to as the 'Two Tier Code'.
- 1.3. Unite was involved, through its predecessor trade unions Amicus and the TGWU, in the discussions that led to publication of these pieces of guidance. The issues raised in this consultation document and the problems they aim to address have previously been on the agenda of the Public Services Forum - which Unite takes part in alongside other public service trade unions. The on-going dialogue provided by the PSLG will continue to be important in taking forward the issues raised in the consultation document and this Unite response.

2. Valuing the workforce: the underlying principles

- 2.1. The update and revision of these pieces of guidance is also an opportunity to give them fresh impetus and to embed them, and the underlying principles, properly across the sector. **There is a greater need to monitor the implementation of the guidance** to ensure that all those delivering services on behalf of local authorities have fair terms and conditions, good pensions and access to training and development. Unite welcomes the continued acknowledgment on the part of government that a well trained and motivated workforce is critical to deliver best value in services, and that "...services which are outsourced cannot deliver best value where it is on the basis of poorer terms and conditions for employees working on public sector contracts".

- 2.2. One of the key principles outlined is that “contracting exercises (including re-tendering) should be conducted on the basis that the *Transfer of Undertakings (Protection of Employment) Regulations 2006* (TUPE) should apply unless there are genuinely exceptional reasons why this should not be the case”¹. Unite believes all staff should be subject to TUPE provisions when their work is outsourced.
- 2.3. Unite is increasingly dealing with what may be termed as ‘2nd and 3rd generation’ outsourcing. For example, where employees originally employed in the public sector have now been employed by a succession of different contractors. In addition, Unite also have experience of members originally employed by Local Authorities where the service they are delivering has been outsourced and the section (or department) of the local authority responsible for the contract has also been outsourced. In such a case the contract is essentially held between two private organisations but they are delivering a public service. The prevalence of outsourcing, and the ever widening range of services and sections of the public sector where outsourcing is threatened, means the resulting complexity must be captured in the re-issued guidance.
- 2.4. For example, Unite members are currently campaigning against the actions of Liverpool Mutual Homes (LMH), who have taken ownership of Liverpool City Council’s housing stock. Unite members employed by *Enterprise*, who have previously been contracted to deliver Housing Maintenance and Repair Services for Liverpool Mutual Homes have recently been issued with redundancy notices as *Enterprise*’s contract for the Housing and Repair Services has been re-tendered. LMH informed all potential contractors for the future Maintenance and Repairs service that they can bid to win the contract without committing to apply the ‘Transfer of Undertakings Protection of Employment’ (TUPE) Regulations. *Enterprise* has been excluded from the re-tendering process due to ‘non-compliance’ – refusing to put forward a non-TUPE bid.
- 2.5. By encouraging possible future contractors to bid for the Maintenance and Repairs contract without agreeing to protection for workers, Unite believes that LMH is giving a green light to 300 local people having their pay and terms and conditions worsened. None of the possible contractors who will be appointed by LMH have joined the local authorities’ pension fund, meaning that employees taken on by the new contractor would have to leave their current pension scheme.
- 2.6. Unite believes that even where the contracting organisation is no longer in the public sector – such as in this example – where services are being delivered on behalf of the public sector (in this case a Local Authority) the re-issued statutory guidance should very clearly apply and this should be clarified in the re-issued guidance.
- 3. Handling of workforce matters in contracting: the context of best value and the principles of good procurement practice**
- 3.1. While there is correct acknowledgement that workforce issues must be taken properly into account when making procurement decisions, and that full and proper communication with the workforce and their trade unions is key to this, Unite remains concerned at the hesitancy in the consultation document to fully recognise

¹ Consultation document, Chapter 6, page 24, paragraph 7

the positive role that good public sector procurement can play. The public sector as a whole has an annual expenditure of £175billion² on goods and services; local authorities account for £40billion³ of this amount. Unite believes this expenditure is a powerful lever in the economy to drive forward policy objectives around environmental sustainability, equality and local re-generation⁴. This will become increasingly important in the next few years.

- 3.2. While the consultation document and the draft guidance highlights that simply applying the 'lowest price' criteria is "...unlikely to be satisfactory", placing greater emphasis on what can be achieved would be welcome. For example, greater emphasis on the application of existing public duties to procurement alongside the citing of the application of EU Equality legislation rather than just highlighting the potential restrictions of EU Procurement legislation.
- 3.3. Unite believes that when discussing the pre-qualification stage⁵ it would be helpful to re-state the recognised link between the treatment of staff and the resulting quality of service, and therefore the relevance of equality policies and equal opportunities of the potential service provider at this pre-qualification stage.
- 3.4. It should also be noted that Unite, alongside the TUC and other trade unions, believes that changes need to be made in the Equality Bill with a specific equality duty on the face of the Bill setting out how equality should be taken into consideration during the commissioning and procurement process.

4. Code of Practice on Workforce Matters in Local Authority Service Contracts: Stopping the Two Tier workforce

- 4.1. The *Two Tier Code* arose after trade unions raised serious concerns that after services were being outsourced from the public sector newly recruited employees were being given worse terms and conditions than their transferred colleagues.

Implementation, monitoring and enforcement

- 4.2. As the consultation document notes, until 1st April 2008 best value authorities were required to prepare annual *Best Value Performance Plans*. These were supposed to identify an authority's progress on performance and improvement, including on the application of the *Two Tier Code*. However, as the Association for Public Service Excellence (APSE) note

"...the removal of the requirement to produce a BVPP meant the enforcement and compliance provisions on the 'Code of Practice', have also been removed. There were essentially a requirement on the best value authority to certify their compliance with the code within the BVPP, and during audit of the BVPP to provide a route for concerns surrounding non-compliance with the code to be raised and dealt with"⁶.

² 'Make Equality Count', OGC, page 3

³ Audit Commission, <http://www.audit-commission.gov.uk/housingefficiency/linksprocurement.asp>

⁴ 'Creating resilient local economies: Exploring the economic footprint of public services', APSE, 2007

⁵ Consultation document, Annex A, page 40

⁶ APSE Briefing 08/52, Best Value and Procurement, November 2008, page 3

- 4.3. The consultation document gives information on the future monitoring arrangements of the application of the *Two Tier Code*, stating that the Audit Commission has developed guidance to support their 'Key Lines of Enquiry' (KLOE) into local authorities use of resources assessments. While Unite is pleased to see the inclusion of compliance with the *Two Tier Code* as a 'basic' a council should be getting right in the auditor's guidance⁷, workforce issues of this nature will only come to light if wider problems over a Council's performance are raised. Unite believe investigation of the application of the *Two Tier Code* and the enforcement of the *Two Tier Code* must be more stringent.
- 4.4. Unite believes that there is a need to not only to ensure that the Code is monitored and enforced, but that core standards or basic minimums should apply to all those delivering public services and be stipulated to ensure that there is no driving down of terms and conditions. A 2005 National Audit Office report found manual workers had been adversely affected by PFI, experiencing a lowering of terms and conditions over the contract duration.
- 4.5. It is also appropriate to highlight here that Unite warmly welcomed the extension of the *Two Tier Code* across the public sector, however there remains areas which are specifically excluded which should not be. These include Further Education, Higher Education, Academy schools. There remains a huge disparity within the NHS as Hard Facilities Management employees are excluded from the Framework agreement that rightly provides equality between staff employed in catering and cleaning services irrespective of who employs them. There also remain within the NHS concerning repair and maintenance workers in the early wave PFI buildings.

5. Pensions

- 5.1. As to the issues on pensions raised in the main consultation document, Unite has consistently made the point that there remains a central and basic inequality that whereas on a transfer other rights are fully protected by TUPE, peoples' pensions are only protected to a limited degree. Also, unlike other areas where the 'no less favourable provisions' have to be applied to new joiners, this requirement for no less favourable treatment does not apply to pensions. Unite believes it should apply and new entrants to the workforce would have to be supplied with either admitted body status or a 'broadly comparable pension'. The current situation on pensions inequality continues to perpetuate a two tier workforce.
- 5.2. Unite has made it clear that the required solution for pensions particularly in regards to the LGPS is for admitted body status to be made compulsory and for new entrants to be allowed into the LGPS.

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⁷ Audit Commission, Section 8 KLOE Guidance 2008/09, KLOE 2.1

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