

SUPPLIER INFORMATION NOTE: WITHDRAWAL OF TWO-TIER CODE

The Coalition Government has committed to opening up government procurement and reducing costs. It has also set itself the aspiration that 25% of government contracts should be awarded to small and medium-sized businesses.

In support of these commitments, the Minister for the Cabinet Office, the Rt Hon Francis Maude MP, has announced his decision to withdraw the Code of Practice in Workforce Matters in Public Sector Service Contracts (commonly referred to as the Two-Tier Code) effective from 13th December 2010

Removal of the Code will help enable SMEs, mutuals, co-operatives, charities and social enterprises to enter the public sector market and have a much greater involvement in the running of public services and is designed to facilitate greater competitiveness and to drive value for money for the taxpayer. A mixed contractor economy will deliver greater competitiveness, drive efficiency and value for money for the taxpayer, and generate opportunities for greater innovation in how public services are provided.

Effect of the withdrawal of the Code

- The Code will be withdrawn from immediate effect. However, its withdrawal does not impact on existing TUPE regulations and provisions in the Employment Act 2008. Nor does it reduce or remove the statutory duties on public authorities to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity, which can apply to contracting authorities and to suppliers in some circumstances.
- Where contracts are renegotiated and any provisions giving effect to the Code are removed as part of the renegotiation, the changes will apply only to future new entrants. Existing employees' terms and conditions will be unchanged.
- Where contracts that have previously applied the Code are being re-competed (resulting in a new contract), the Code will not be invoked upon award of the contract.
- When existing contracts which have invoked the Code are being extended, the Code will continue to apply where adherence to the Code is included in the terms and conditions of the original contract, unless both parties agree otherwise.

Principles of Good Employment Practice

Government recognises the importance and value of good employment practices in delivering public services. Therefore to encourage and safeguard good employment practice, the Cabinet Office has published a set of voluntary Principles of Good Employment Practice that have been developed in discussion with trade unions, suppliers and public service employer organisations. It is expected that the principles will be relevant in circumstances where Government's employees transfer to the contractor's workforce, as was the case with the Two-Tier Code.

The principles are set out in **Annex A**.

What this means for suppliers

These principles should not act as a barrier to those wishing to contract with central government as these principles are not mandatory, nor will their adoption be part of the formal procurement or decision making process. Therefore, there is no obligation on suppliers to implement the principles and contracts will still be awarded on the basis of value for money and not on the basis of who signs up to the principles as these are a voluntary set of principles.

The Principles of Good Employment Practice in procurement provide a flexible guide to suppliers and signal what Government expects of the best suppliers in their employment practices and believes that these practices help create a well managed, engaged and motivated workforce and through them, better delivery of public services.

Whilst these principles do not form part of the procurement process, Government hopes that suppliers will work with departments to apply the principles where appropriate. Government will review the application of the principles through the Public Services Forum, which is a national forum for dialogue between government, public service employers and TUC affiliated trade unions on public service workforce issues.

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ANNEX A

PRINCIPLES OF GOOD EMPLOYMENT PRACTICE FOR GOVERNMENT, CONTRACTING AUTHORITIES AND SUPPLIERS

The Coalition Government has committed to opening up government procurement and reducing costs. It has also set itself the aspiration that 25% of government contracts should be awarded to small and medium-sized businesses.

Government understands that value for money means securing the best mix of quality and effectiveness for the least outlay. This applies to the whole lifetime of goods or services from purchase through to disposal.

In support of its aspirations, Government has developed a statement of principles of good employment practice that will form part of good practice literature and be shared with contracting authorities and suppliers.¹

Government wants:

- employers of all sizes and from all sectors to have the freedom and flexibility to motivate and reward their workforce, to meet business needs.
- public, private, voluntary and community organisations to learn from each other and share best practice in the spirit of continuous improvement.
- employers to be aware of the best practice that fosters employee engagement, access to skills and development whilst securing quality outcomes in the provision of public services;

Six principles

This document is a statement of principles that reflect good employment practice. These principles are supported by Government and are voluntary.

1. Government as a good client

- Through its commissioning, procurement standards and processes, central Government should encourage contracting authorities and suppliers to promote good workforce practices in the delivery of public services. Government will ensure that the workforce practices of the supplier are considered throughout the procurement process, where appropriate.*
- Government will use outcome-based commissioning wherever possible; this is instead of prescribing how services are to be delivered. Using outcome-based commissioning will encourage more innovative approaches to the delivery of public services.*

¹ This set of principles is voluntary and sits outside of the formal procurement decision making process, but will be disseminated to suppliers and commissioners

2. Training and skills

- i. In letting and managing public contracts, the procurement process of contracting organisations will recognise the importance of basic skills such as literacy, numeracy and spoken English where these skills are relevant. These skills are often required in the delivery of public services, and enable the workforce to provide better quality services, particularly those in customer facing roles.*
- ii. Suppliers will be able to demonstrate that staff have appropriate training, qualifications and access to continuing professional development as befits their role; and that staff are supported to develop their skills and grow their experience in line with any future roles that may be expected of them.*
- iii. Where there is a recognised trade union, suppliers will consult on workforce training and development issues.*

3. A commitment to fair and reasonable terms and conditions

- i. Where a supplier employs new entrants that sit alongside former public sector workers, new entrants should have fair and reasonable pay, terms and conditions. Suppliers should consult with their recognised trade unions on the terms and conditions to be offered to new entrants.*

4. Equality

- i. Contracting organisations will ensure that supplier policies and processes are entirely consistent with the responsibilities they have as employers under the Equality Act 2010. Government will ensure it delegates relevant legal obligations when suppliers are carrying out public functions.*
- ii. Government expects that suppliers will be able to demonstrate how working practices support their responsibilities as good employers.*

5. Dispute resolution

- i. All suppliers delivering public services should have regard to good industrial relations practice on dispute resolution. This includes treating employees fairly and ensuring compliance with the law on trade union membership.*
- ii. Suppliers will ensure that where there is a dispute, employees are aware of and have access to clear processes for dispute resolution. Government expects suppliers to consider the services of ACAS² as an option that is explored when disputes have not been resolved by internal support systems and processes.*
- iii. Where an employee has a right to be represented by a trade union, the employer will work with the employee and recognised trade union.*

² ACAS is the Advisory, Conciliation and Arbitration Service. ACAS provides free, confidential and impartial advice on a wide range of employment and industrial relations issues

6. Employee engagement

- i. *The themes identified in **Drive for Change**³ place leadership, the design and delivery of service improvements, communications and a framework for staff engagement as vital components in ensuring and enhancing employee engagement.*
- ii. ***The MacLeod Review**⁴ on employee engagement cited evidence of a positive correlation between an engaged workforce and improving performance. Building on the findings of the review, Government will encourage contractors to develop effective staff engagement strategies that enable people to be the best they can be at work.*
- iii. *Government recognises the premise that engagement between employee, employer and a recognised trade union where appropriate can be a key to unlocking productivity and creating a motivated workforce that feels respected, involved, heard, is well led and valued by those they work for and with.*

Review

The impact of these principles on employment practice will be reviewed by the Public Services Forum in January 2012. The Forum will assess how the principles contribute to good employment practices in the delivery of contracted out services.

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³ Drive for Change is a practical tool for staff engagement in service improvement. The Drive for Change initiative was developed and supported by Cabinet Office and the Trades Union Congress and is currently in the process of being refreshed.

⁴The MacLeod Review was commissioned by the Department for Business, Innovation and Skills to take an in-depth look at employee engagement and to report on the potential benefits for organisations and employees.