

NORTH LONDON WASTE AUTHORITY

REPORT TITLE: WORKFORCE STANDARDS (EMPLOYMENT RELATIONS) CODE OF PRACTICE AND POLICY

REPORT OF: PROGRAMME DIRECTOR

FOR SUBMISSION TO: PROGRAMME COMMITTEE

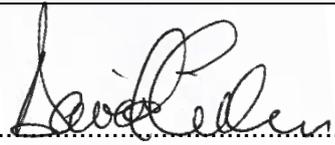
DATE: 22 JULY 2019

SUMMARY OF REPORT:

This report contains the Project's proposed Workforce Standards (Employment Relations) Code of Practice and Policy. It builds on the recommendations made in the North London Heat and Power Project Update paper discussed at the April 2019 Authority Meeting. The considerations that have been made in the development of the Code of Practice and Policy are outlined in this paper.

RECOMMENDATIONS:

The Authority is recommended to approve the Code of Practice and Policy for use in future works contracts.

SIGNED:  **Programme Director**

DATE: 10 July 2019

1. INTRODUCTION

- 1.1. The purpose of this paper is to present the North London Heat and Power Project's (NLHPP) proposed Employment Relations Code of Practice and Employment Relations Policy for approval and provide background to the considerations made in developing their content.
- 1.2. The case for developing a Policy and Code of Practice for the Project was made in the Programme Director's Project Update report to Members for the Authority Meeting on 4 April 2019. This case was based on the need for the Project to be a positive role model for good employment practice in London's construction sector. Workforce standards are commonly referred to as employment relations in the construction industry and the terminology is interchangeable. The scope of this paper and its recommendations for managing employment relations is limited to the construction of the North London Heat and Power Project (NLHPP), and therefore does not apply to LondonEnergy Ltd's business. Reference to the EcoPark is merely geographic as the site where the construction is taking place.
- 1.3. The policy defines the objective of the Authority in the area of employment relations. The code of practice sets out the practices that contractors, as employers of on-site workforces, shall follow to achieve the Authority's policy.
- 1.4. The principles contributing to good employment relations, as set out in the April 2019 paper, have guided the development of a draft Employment Relations Code of Practice for the Project. The application of this code of practice will enable the Authority as the client to assure itself that its contractors working on site are employing their workforce under fair terms and conditions and taking the opportunity to bring employment benefits to the local community. The requirement to follow the code of practice will extend to all contractor and sub-contractor supply chains working on site, including small and medium size enterprises (SMEs).
- 1.5. Section 2 addresses the role of trade unions and National Working Rule Agreements in the construction industry and their influence on good workforce standards and positive industrial relations.
- 1.6. Section 3 considers the main risks to achieving good employment relations that the code of practice has been developed to address. The code of practice has also been developed building on the principles of the Section 2 of the NLHPP Project Update (Workforce Standards (Employment Relations) Policy) presented to Members and agreed at the April 2019 Authority meeting.
- 1.7. Section 4 describes measures that the officers will employ to provide assurance that the code of practice is being applied by contractors. As a client, the Authority will not get involved in day to day running of employment relations within contractor organisations but has a legitimate interest in assuring itself that contractors are managing matters appropriately and in accordance with contractual obligations.
- 1.8. Appendix A contains the proposed Employment Relations Policy.
- 1.9. Appendix B contains the proposed Employment Relations Code of Practice.

2. WORKFORCE STANDARDS AND INDUSTRIAL RELATIONS

2.1. In further consideration of a suitable Employment Relations Code of Practice, the relationship with trade unions as a key stakeholder has been considered including the role of National Working Rule Agreements.

2.2. National Working Rule Agreements

2.2.1. The construction industry arrangements for terms and conditions of employment for manual workers have historically been established by agreement between employer organisations and trade unions. These are set out in several National Working Rule Agreements which are usually revised every two to three years.

2.2.2. There are two main industry sector agreements that would apply to the Project:

2.2.2.1. The Construction Industry Joint Council Working Rule Agreement (CIJC) is the benchmark for civil engineering and building trades in both sectors.

2.2.2.2. The National Agreement for the Engineering Construction Industry (NAECI) applies to mechanical, electrical, instrumentation and insulation trades but only when employed on engineering construction projects.

2.2.3. There are differences between the sectors and how they apply these Agreements. The CIJC sets a minimum which enables it to be amended to market conditions, whereas the NAECI is more prescriptive with little room for negotiation at project level. The scope of the NAECI is relevant to the construction of the Energy Recovery Facility (ERF), but not the other elements of the NLHPP.

2.2.4. On some projects Supplementary Project Agreements to NAECI have been signed between the prime contractor, the industry association and trade unions. This appears to have enabled the standard NAECI to be tailored to the project.

2.2.5. Although there is no legal requirement to comply with agreements such as the CIJC or NAECI, contractors who apply less favourable terms and conditions may have increased risk of industrial relations issues and may fail to recognise the benefits to workforce health and safety, and productivity performance, that agreements have the potential to support. Therefore, the proposed code of practice requires that employers use employment terms and conditions that are no less favourable than an appropriate industry National Working Rule Agreement.

2.3. Trade Unions

2.3.1. Trade union membership has been in decline for many years as has the number of trade unions. Government data estimates overall union density

in the construction industry to be in the order of 14%, however it will almost certainly be higher within the electrical and mechanical workforce.

- 2.3.2. Following a series of union mergers Unite is now by far the largest trade union representing construction workers and is signatory to all construction industry National Working Rule Agreements. The GMB is signatory to some agreements and their main involvement is in the engineering construction sector where they represent most insulators and welders.
- 2.3.3. A positive relationship with trade unions such as Unite and GMB is beneficial to the Project through their positive influence on health, safety and productivity, plus the mitigation of financial, schedule and reputational risk associated with disruption resulting from industrial relations matters.
- 2.3.4. In its position as client, the Authority is able to ensure that trade union freedoms are respected and protected and encourage positive engagement between the contractors and trade unions. The Authority will provide opportunity for periodic information sharing sessions, one-to-one meeting with senior trade union officials and ensuring site access for officials.

3. CODE OF PRACTICE FOR EMPLOYMENT RELATIONS

- 3.1. The code of practice is intended to provide a clear set of requirements and measures that will result in the Project meeting the Authority's aim to be a role model for good employment practice. It is to be applied by the contractors who will be held to account for following it through contractual requirements. As well as being a contractual requirement, the code of practice is intended to be welcomed by contractors and their supply chains because it is helpful to them in maintaining good industrial relations.
- 3.2. In developing the code of practice, factors that experience shows lead to good employment relations have been considered as follows:

3.3. Health and Safety

- 3.3.1. The EcoPark is an operational waste management site and the construction workforce will be operating within delineated construction areas under the control of a Principal Contractor. Therefore, it is important that the adjacent waste management and construction operations do not pose health and safety risks to each other and that the code of practice requires open communication and collaboration between them.
- 3.3.2. The Project's health and safety management plan which is being prepared and will set out requirements for contractors and performance against them is assured by the Authority. Therefore, the code of practice does not make detailed requirements relating to health and safety but reinforces the need for collaboration and dialogue to avoid disruptions to construction or waste management operations.

3.4. Employment Status

- 3.4.1. False self-employment, and other examples of a lack protection or enforcement of employment rights at the lower-wage end of the market, have created a workforce at risk of abuse or exploitation in the civil engineering and building sector. This is a continuing risk and the code of practice makes it clear that contractors must commit to Pay As You Earn (PAYE) direct employment wherever possible.
- 3.4.2. As employment status problems are often associated with a contractor's supply chain, their policy on the appointment and management of subcontractors and labour agencies will be scrutinised.

3.5. Terms and Conditions of Employment

- 3.5.1. Problems can arise where an employer pays less than the appropriate National Working Rule Agreement and the 'going rate' which varies in line with labour demand and supply, and the size and significance of a project. The code of practice requires employers to provide industry competitive terms and conditions which are no less favourable than those set out in the National Working Rule Agreement appropriate to their scope of work, and subject to compliance with the London Living Wage where applicable.

3.6. Site Logistics and Welfare

- 3.6.1. There will be multiple contractors working concurrently on site and therefore a common and minimum standard of welfare will be set through contractual requirements. The Project is also providing common welfare facilities in the Laydown Area (Project E1) being constructed adjacent to the EcoPark site.
- 3.6.2. Site logistics in the EcoPark site involve a variable size of workforce, plant and materials moving between work sites, the Laydown Area and EcoPark access and egress points. The Authority Project Team will work closely and continuously with the EcoPark operators to plan and manage logistics and set up collaboration between contractors to ensure that, for example, the workforce is able to get to and from their work-breaks efficiently.

3.7. Labour Availability

- 3.7.1. The principles of the Workforce Standards (Employment Relations) Policy discussed with Members in April 2019 included promoting the importance of recruiting local labour. The London labour market should be more than able to satisfy all civil engineering, building and electrical trade requirements and, provided a competitive employment package is on offer, labour availability for these trades should not be an issue. Brexit may have an impact on the availability of some manual labour at the lower-wage end of the labour market. Attracting and retaining local mechanical and instrumentation trades needed for the ERF may be more of a challenge due to their specialist nature.

3.7.2. The code of practice encourages contractors to consider suitably qualified local applicants. Recruitment activities will not be allowed to take place at the EcoPark site (and, in particular, the recruitment of existing LEL staff is prohibited) but recruitment coordination between contractors and Jobcentre Plus will be facilitated.

3.8. Trade Union Relations

3.8.1. Trade unions are taking an interest in the Project and the Authority Project Team will have periodic information sharing meetings with their representatives. This is intended to promote good industrial relations on the Project through the code of practice encouraging Contractors to engage positively with trade unions and respecting the rights of employees to be a member of a trade union of their choice.

3.9. Equality, Diversity and Inclusion (EDI)

3.9.1. The code of practice contains the statements on the principles of equality, diversity and inclusion that are to be followed and demonstrated.

3.10. Training

3.10.1. Contractors and their supply chains are the employers of the workforce and therefore primarily responsible for training them, not only for their roles, but also enabling them to develop their skills from the opportunity that the Project offers. The Project covers a wide range of training requirements and skills development opportunities due to the breadth of engineering and construction activities that are needed. The code of practice sets out the principle that a well-trained and inducted workforce is an important part of good employment relations and that contractors shall use the opportunities that the Project offers to develop skills.

3.10.2. Subject to approval from Members of the code of practice in Appendix B, will be finalised and brought into use in future works contracts.

4. MANAGEMENT MEASURES BY THE AUTHORITIES PROJECT TEAM

4.1. The effectiveness of the code of practice comes from the contractors and their supply chains implementing it in the delivery of their works. The Authority Project Team is taking a lead in employment relations by having a code of practice and assuring itself that it is implemented across the employers of the Project's site-based workforce. The approach to this is not only to be robust in requiring contractors to comply but also to work with them collaboratively and focus on the benefits that it brings in having better industrial relations and productivity. To achieve this, the Authority Project Team is including the following measures in its management of the Project to implement the code of practice and thereby achieve the standards required by the Employment Relations Policy.

4.2. Procurement

- 4.2.1. The requirements to comply with the Employment Relations Code of Practice will be included in the works contracts between contractors and the Authority.
- 4.2.2. Potential contractors' corporate Employment Relations Policy will be assessed as part of the selection of firms to invite to tender.
- 4.2.3. Tenderers will be required to outline their proposed Employment Relations Plan for their works and this will be included in the tender assessment.
- 4.2.4. These measures will be included in the balanced set of evaluation criteria to as part of the approach to responsible procurement and ensuring that the Authority's contractors are not only capable but also committed to the Employment Relations Code of Practice.
- 4.2.5. Work is ongoing to review the contractual mechanism for incorporation of the Code of Practice in the contracts and procurement documents with the Authority's legal advisors.

4.3. Mobilisation and Set Up

- 4.3.1. Contractors will be required to submit and present their project Employment Relations Plan within four weeks of contract award. It is required to address how they will implement the code of practice, recruiting suitably qualified local labour, create apprenticeships, manage industrial relations risks and achieve the benchmark set by National Working Rule Agreements.
- 4.3.2. As described in Section 3.6, smooth running site logistics is a factor in good employment relations. LondonEnergy Ltd (LEL), as the EcoPark operator, control access and egress to it, and therefore have an important role to play in facilitating the construction workforce accessing their workplace. There is equally a need to anticipate the peak flows of people and materials and discuss this with LEL's management. A contractor's proposed logistics and workforce level plans will be reviewed by the Authority Project Team and LEL.
- 4.3.3. Contractors will be required to work with the local Jobcentre Plus to support local employment opportunities.
- 4.3.4. Contractors will be required to provide evidence that their supply chain has been selected in recognition of the code of practice and is also capable and committed to working to it.
- 4.3.5. Workforce induction by contractors on site will be required to include awareness of the code of practice and a dedicated workforce concerns helpline.

4.4. Monitoring and Control

- 4.4.1. Progress meetings will include employment relations on the agenda with a report from the contractor on its employment relations performance/compliance against its plans that have been agreed during the set up and mobilisation phase.
- 4.4.2. Contractor employment relations plan reviews will be held periodically to incorporate lessons learnt and changes in market conditions if necessary.
- 4.4.3. When several contractors are working concurrently on site, the Authority Project Team will periodically call and chair an Employment Relations Forum with management representatives from the contractors to facilitate collaboration on the implementation of the code of practice. LEL, as the EcoPark operator, will be invited to these meetings to ensure that employment relations issues and risks arising from waste management and construction operations working side by side are managed.
- 4.4.4. An audit regime of employers' pay-rolls to verify that compliance with minimum standards will be developed and agreed with contractors.

4.5. Issues Management

- 4.5.1. The Authority Project Team will monitor a dedicated confidential workforce concerns helpline and address issues raised in conjunction with the relevant contractor as applicable.

4.6. Trade Union Engagement

- 4.6.1. The Programme Director will continue to share information about the Project's progress and plans with trade union representatives and encourage contractors to positively engage with them.

5. EQUALITIES IMPLICATIONS

- 5.1. There are no adverse equalities implications of this report. The code of practice is fundamentally associated with the achievement of fair employment standards and specifically promotes the requirement for equality, diversity and inclusions to be properly addressed in the contractor employment relations plans.

6. COMMENTS OF THE LEGAL ADVISER

- 6.1. The Legal Adviser has been consulted in the preparation of this report and comments have been incorporated.

7. COMMENTS OF THE FINANCIAL ADVISER

- 7.1. The Financial Adviser has been consulted in the preparation of this report and all comments have been incorporated.

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APPENDIX A: EMPLOYMENT RELATIONS POLICY

It is the North London Waste Authority's policy to ensure the construction workforce employed on the North London Heat and Power Project is treated with respect and fairness and not exploited in any way.

To achieve this all Contractors will be contractually required to comply with the following;

- Ensure their employees have a legal right to work in the UK
- Ensure their employees are directly employed on a PAYE basis.
- Prohibit false self-employment and other forms of questionable employment.
- Ensure their employees receive terms and conditions of employment that are no less favourable than an appropriate industry National Working Rule Agreement and the London Living Wage.
- Ensure suitably qualified applicants from the local communities receive preferential consideration for employment.
- Ensure their employees are fully aware of the workforce confidential helpline.
- Recognise the right of employees to be members of a trade union.
- Implement a robust Health and Safety Plan.
- Provide training opportunities for apprentices

The above policy measures and other operational requirements will be included in an Employment Relations Code of Practice which will be incorporated in all construction contracts. Performance against the Code of Practice will be reviewed with Contractors. The Authority will not interfere in the employment arrangements between project employers and their employees but will have a contractual right to audit all site employers for compliance with the above policy.

APPENDIX B: EMPLOYMENT RELATIONS CODE OF PRACTICE

1 INTRODUCTION

Establishing and maintaining stable and harmonious employment relations will greatly assist the successful completion of the North London Heat and Power Project.

It is the policy of the North London Waste Authority not to get involved in the employment relations arrangements between Contractors and their employees, but it is their policy to ensure that contractors are managing matters appropriately and that all employees working on the Project are treated with respect and fairness.

The purpose of this Code of Practice is to help achieve all the above by setting out minimum employment standards and other policies and procedures to promote a high standard of employment relations across all employers of the Project's workforce on site.

If at any time an employer is unable to comply with any of this Code of Practice, they may propose alternative arrangements for approval.

In this Code of Practice, contractors are defined as the organisations with whom the North London Waste Authority has contracted to undertake works on its North London Heat and Power Project.

1.1 Scope

The provisions of the Code of Practice applicable to all employers of construction manual labour and construction support personnel on the Project.

Contractors are responsible for ensuring that their supply chains also abide by this Code of Practice.

1.2 Safety First

The North London Waste Authority puts safety first, and therefore the contractor Employment Relations Plans shall address how the workforce is engaged in ensuring the health, safety and well-being of everyone working on site. Contractors who are working on site concurrently shall collaborate to co-ordinate their operations with each other and waste management operations in the EcoPark.

It is a key objective of the Project to deliver a working facility without personal injury or risk to health, on time, and built to the required standards of quality. Compliance with UK Health and Safety legislation is a fixed requirement. This is supported by a genuine management interest in the safety, health and welfare of every contributing individual.

The participation and cooperation of every employee is essential to achieve this objective. This includes but is not limited to:

- complying with all site Safety Rules;
- compliance with PPE requirements;
- compliance with smoking and drug & alcohol rules;
- pro-active participation in identifying risks and safe work methods, including the reporting of any incidents or near misses;
- carrying out work strictly in accordance with accepted risk assessments, method statements and any agreed workplace precautions and;

- accept the challenge to participate in a challenging project programme involving innovative construction methods; and remember at all times that NOTHING IS SO IMPORTANT THAT IT CANNOT BE DONE SAFELY.

1.3 Employment

Contractors are responsible for ensuring all personnel working on their contract have:

- A legal right to work in the UK, and
- Are directly employed on a PAYE basis.

False self-employment or employment via payroll or umbrella companies and equivalent is strictly prohibited.

Contractors are also responsible for ensuring that their supply chain of subcontractors and labour supply companies (agencies) are fully aware and committed to the requirements of this Code of Practice and particularly those relating to direct employment and terms and conditions.

Discrimination or blacklisting of any kind is strictly prohibited.

1.4 Equality, Diversity and Inclusion

The Authority considers that:

- Equality means treating the everyone in the workforce fairly and with dignity and respect.
- Diversity means embracing the different skills and experiences in the workforce to bring great ideas and innovation.
- Inclusion means being a working environment where everyone is valued and is encouraged to contribute.

Contractors shall reflect these principles in their management of the workforce and include their application in Employment Relations Plans. The Authority will support this effort in its role as Client.

1.5 Recruitment

All project recruitment shall be carried out in liaison with the local Jobcentre Plus office.

Contractors shall prioritise employment of suitably qualified local applicants.

Recruitment activity on site (including LondonEnergy Ltd areas) is not allowed

Contractors shall not make any offer of employment to an existing site employee (including LondonEnergy Ltd employees) without first obtaining agreement from the employees' current employer.

1.6 Terms and Conditions of Employment

All site employers of construction manual labour shall provide terms and conditions which are:

- No less favourable than the London Living Wage,

- No less favourable than an appropriate industry National Working Rule Agreement,
- Industry competitive to attract, retain and motivate a competent workforce.

This above requirement includes all terms and conditions

The basis on which overtime and holiday pay are calculated shall be clearly set out in each employee's contract of employment.

Appropriate construction industry National Working Rule Agreements include:

- The Construction Industry Joint Council Working Rule Agreement
- The National Agreement for the Engineering Construction Industry
- The Joint Industry Board Agreement for the Electrical Contracting Industry.
- The Joint Industry Board Plumbing Mechanical Engineering Services Agreement in England and Wales.
- The Thermal Insulating Contracting Industry National Agreement.

Contractors shall ensure all employers of labour on their contract have written detailed grievance and disciplinary procedures in place and that they are clearly communicated to their employees.

1.7 Training

A well-trained and inducted workforce is an important part of good employment relations. Contractors shall use the opportunities that the Project offers to develop skills and ensure that the workforce is well-trained and inducted to the site and their role within the Project.

The Authority will provide Project-specific material and information to contractors where appropriate to support their training and induction plans.

1.8 Construction Support Personnel

Employers shall provide construction support personnel (security, catering, cleaning etc.) on terms and conditions that are no less favourable than the London Living Wage.

1.9 Apprentices

Employers shall provide apprentices' terms and conditions that are no less favourable than the London Living Wage.

1.10 Trade Union Relations

North London Waste Authority is aware of the construction trade unions' interest in the Project and plan to have periodic liaison meetings with them to update them on project progress, future plans and construction contract awards.

The North London Waste Authority policy is to encourage contractors to engage positively with the trade unions and to respect the right of all employees to be members of a trade union of their choice.

1.11 Auditing

Contractors are responsible for auditing their supply chain's compliance with this Code of Practice. The first audit shall be carried out within four weeks of an employer commencing work on site. Thereafter audits shall be carried out at frequencies set out in contracts or when requested by the North London Waste Authority.

The North London Waste Authority will audit Contractors and also retain the right to carry out random audits on all employers of labour on site for compliance with this Code of Practice.

Immediate action shall be taken where non-compliance is identified, and a follow up audit will be carried out to ensure the employer concerned has corrected any non-compliance.