

## APPENDIX 3

### FAIR EMPLOYMENT CLAUSE

#### **Service Contracts**

The Council regularly has to buy in services from contractors on a wide range of matters, such as advertising, financial services etc when it has a service requirement that needs meeting.

**A services contract is where the Council engages a person to provide services, such as advertising services, financial services etc.**

In such circumstances, the Council, on a case by case basis, may decide to consider workforce matters in the procurement process in accordance with the Council's policy statement on equality and fairness in procurement.

In considering the application of the fair employment clause (appendix 1) as a workforce matter in this type of procurement then it may only do so if the contract falls within the parameters set out below;

**Contracts over £100,000 (as a single contract).**

**'one off' contracts are excluded and so too are consultancy contracts.**

**Further, only services contracts are caught where there is evidence of equivalent employees for the purposes of comparison.**

The Council does not wish to see procurement or outsourcing of services driving down terms and conditions of service for employees.

The Council will consider all tenders from contractors in so far as they are compatible with the Council's duty to achieve best value.

#### **Works Contracts**

In this context a works contract is one where the council procure a contractor to carry out work on its behalf (as opposed to services) eg. construction related matters. It is accepted that some contracts may be mixed ie both services and works and so an assessment has to be taken as to the dominant element of the contract.

In such circumstances, the Council, on a case by case basis, may decide to consider workforce matters in the procurement process in accordance with the Council's policy statement on equality and fairness in procurement.

In particularly considering the application of the fair employment clause (appendix 1) as a workforce matter in this type of procurement then it may only do so if the contract ;

**Exceeds £200,000 as a single contract (' such contract not being a one - off')**

**or**

**a contract exceeding £200k and of 3 years or more duration (such contract may be a one off)**

**and in both cases there must be evidence of equivalent employees for the purposes of comparison.**

The Council does not wish to see procurement or outsourcing of services driving down terms and conditions of service for employees.

The Council will consider at all times tenders from contractors in so far as they are compatible with the Council's duty to achieve best value.

### **E U Contracts**

The Council may seek in principle to take into account workforce matters when contracting in accordance with E U procurement directives, as long as this is not directly or indirectly discriminatory under the original principles of European law or domestic law.

## **Appendix 1**

### **Potential fair Employment Clause**

- a) 'Each employee of the contractor who is at any time engaged in (the contract of work) shall be employed by the contractor at that time on terms and conditions of service which are when considered as a whole, no less favourable to that employee, then the terms and conditions of service which the Council would at that time afford on employee (enjoyed in equivalent work, or of equivalent seniority)'

- b) For the purposes of a) the phrase terms and conditions of service shall include but shall not be limited to, all provisions relating to salary, benefits, entitlements, hours of work, holiday rights and pension rights.'

This page is intentionally left blank