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22 December 2011

To Heads of Departments / Offices

Department of Public Expenditure & Reform Circular 15/2011: Mechanism to monitor compliance with employment law in outsourced operations under the Croke Park Agreement

A Dhuine Uasail

1. The Public Service Agreement 2010 – 2014 (Croke Park Agreement, paragraph 13 of Chapter 1 Appendix on Service Delivery Options) requires the Parties to the Agreement to establish a mechanism to monitor compliance with employment law, including Registered Employment Agreements, in outsourced operations, other than for operations that may reasonably be considered as small scale.
2. The Implementation Body established under the Agreement has consulted with relevant stakeholders and has devised an appropriate monitoring mechanism. This sets out arrangements to be put in place involving the outsourcing authority and the relevant staff representatives. **The attached document sets out the agreed arrangements.**
3. You are requested to ensure
 - (i) that the procedures outlined in the document are observed by your Department and
 - (ii) that the procedures are brought to the attention of, and are observed by, public authorities operating under the aegis of your Department

in outsourcing of services under the Public Service Agreement 2010 – 2014.

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Mechanism Envisaged in Paragraph 13 of Appendix: Service Delivery Options of the Croke Park Agreement

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1. Introduction

- 1.1 Paragraph 13 of the Appendix: Service Delivery Options of the Croke Park Agreement requires the establishment of a mechanism to monitor compliance with employment law, including REA's, in operations outsourced in accordance with the terms of the Appendix, (other than those specified in paragraph 5).
- 1.2 The establishment of the mechanism is guided by principles agreed by the parties including the use of direct labour to the greatest extent possible where consistent with the efficient and effective delivery of public services, and the use of public procurement policy as a mechanism for contributing to the maintenance of employment standards including respect for wage levels while also ensuring competitive tendering and value for money in public expenditure.
- 1.3 The commitments in the Appendix to the Agreement provide a further opportunity to finalise arrangements that were to be put in place arising from commitments entered into by the Social Partners in Towards 2016.

2. The Procurement Process

- 2.1 The Appendix to the Agreement describes the procurement process in cases where a public authority decides to involve a private sector entity in the provision of a public service (other than those specified in paragraph 5).
- 2.2 It is confirmed that public authorities are required to consult with the trade unions at key stages in the procurement process. While tendering processes differ, it is considered that, at a minimum, the following constitute the key stages in the process: when the decision is taken by the authority to outsource the service; when the tender is advertised; when the tender is awarded.

- 2.3 In line with the provisions of the Agreement, procurement will not result in a worsening of the pay rates, pensions and employment conditions of employees remaining in the public service and there will be no compulsory redundancies in any outsourcing.
- 2.4 Private sector employers acting under a public service outsourcing contract will as part of that contract be required to comply with all statutory terms and conditions relating to the employment of people in the Republic of Ireland, including any Registered Employment Agreement, and consistent with the requirements of EU and national law.
- 2.5 Consistent with the above principles, when it is necessary to provide some new and/or existing services on an outsourced basis, existing procedural agreements in the Public Service sectors will continue to apply.

3. Ensuring Compliance

- 3.1 In cases where a public service body has decided to involve a private sector entity in the provision of a public service in accordance with the provisions of the Appendix (other than those specified in paragraph 5), the following mechanism is agreed to help ensure compliance.
- 3.2 In designing a mechanism to ensure compliance with the terms of the agreement the parties have been informed by,
- Agreed mechanisms currently in place in some parts of the public service,
 - Recent agreed changes to the terms of the Registered Employment Agreement (REA) for the Construction Industry aimed at ensuring compliance with the terms of the REA.
- 3.3 It will be a condition of any contract entered into by a public authority with a private sector entity to provide a public service in accordance with the provisions of the Appendix (other than those specified in paragraph 5) that that entity is required to provide certificates that confirm compliance with statutory tax requirements, and confirmation of compliance with health and safety obligations (including confirmation that the entity holds appropriate and adequate insurance cover). The entity will also be required to provide a right to information to allow the authority to assess compliance with employment

legislation, including relevant REAs, consistent with the requirements of EU and national law. Any subcontractors employed will also be required to adhere to these conditions. The entity will also make it clear to tenderers their expectation that state dispute resolution mechanisms will be used to resolve any employment dispute, including any involving sub-contractors.

- 3.4 Once the contract is awarded the public authority will notify a nominated trade union official of its award using a standard form, in line with the format at Appendix A. The standard form will contain the name and address of the contractor, contact details of the contractor, the name of the public authority dealing with the contract, name and contact details of the person designated in the public authority as responsible for the contract, nature of the contract, location of the contract, date of commencement, duration of the contract and the name and contact details of the person(s) designated as the representative of the private sector entity. The public contracting authority will also notify NERA and provide it with a copy of the above form.

- 3.5 Both sides are committed to ensuring that there is a strong culture of compliance with employment regulation where work is been carried out on behalf of a Public Authority. Public Authorities for their part will act to ensure the provisions of this mechanism are effective. The National Implementation Body will review the operation of this mechanism after one year in operation.

Appendix A

Standard Form for Notification by a Public Authority of operations to be outsourced in accordance with the terms of the Appendix to the Public Service Agreement 2010 - 2014: Service Delivery Options.

1. The name and address of the Private Sector entity involved
2. Contact details of the Private Sector entity
3. The name and contact details of the person(s) designated as the representative of the private sector entity.

4. The name of the public authority dealing with the contract,
5. Name and contact details of the person designated in the public authority as responsible for the contract

6. Nature of the contract,
7. Location of the contract,
8. Date of commencement of the contract
9. Duration of the contract

The standard notification should be provided to the trade union official nominated for that purpose.

A copy of this form should be sent to NERA [Padraig Dooley: padraigdooley@employmentrights.ie].