

WYPCC – Briefing / Decision template

From: Jon Carter – PFI Contract Manager

Date: 8th July 2013

Circulation list:

Purpose:	For Decision – by Mr Mark Burns-Williamson
Cleared by:	

SUBJECT OF ADVICE: Code of Conduct for Operational PFI Contracts

Summary: In May 2012, following a lengthy competitive dialogue, West Yorkshire Police Authority entered into a PFI Contract with Interserve Construction Limited. The contract was to both construct and facility manage the buildings, over a twenty-five year period, which were are currently under construction. Namely; Wakefield Divisional HQ including custody facility, City and Holbeck Divisional HQ including custody facility and a Firearms Training Facilities, Public Order Training Facilities and associated classrooms and administration offices at Carr Gate.

In June of 2013 the government reissued a code of conduct in relation to Public Private Partnership (PPP), Private Finance Initiatives (PFI), PF2 Contract (the latest version of PFI) and other variants of PPP Contracts. This is a voluntary code of conduct on which public and private sector partners agree to work together to make savings in operational PFI Contracts.

The code sets out eight commitments for both public and private sector parties on constructive engagement, flexibility and improving operational efficiency. These commitments seek to support an overall improvement in contract management relationships and behaviours and the creation of a more effective working environment between customers and suppliers.

The launch of the code forms part of the government's wider work on reducing the cost of PFI under the Operational Savings Programme, which has already achieved savings of £1.5 billion since it started two years ago. The code has been developed with the support of relevant trade bodies and a cross-section of lenders, investors, construction contractors and facilities management providers. The government advise that 'All parties to PPP contracts should be able to sign up to these commitments which reflect best practice in the sector'.

The ethics and commitments within the code are already included within the existing contract between West Yorkshire Police and Interserve Construction Limited. However, Interserve has also signed up to the code and one other Police and Crime Commissioner has also signed to date. Evidence of this can be found at:

[https://www.gov.uk/government/publications/code-of-conduct-for-operational-pfipp-
contracts](https://www.gov.uk/government/publications/code-of-conduct-for-operational-pfipp-contracts)

A copy of the code can be found at Appendix A to this report and further information on signing up to the code can be obtained by contacting osp@hmtreasury.gsi.gov.uk

Recommendation: That agreement is given for the Code of Conduct for Operational PFI Contracts to be signed up to.

Consideration: Signing up to the code will assist in the transparency of West Yorkshire Police and demonstrate a commitment to an open, honest and partnership approach to contractors, both present and future. It will also demonstrate a further commitment to the government's Operational Savings Programme.

Affordability: There are no financial implications attached to the code.

Handling: Consultations with key stakeholders in relation to the contract conditions took place at all stages within the PFI procurement process and these were approved at board level. The signing of the code will not make any fundamental changes to the contract which is already in place.

Risks/Legal Opinion: All risks and other decisions were subject to legal scrutiny and due diligence prior to the contract being signed. The code will not make any changes to the contractual obligations which are already in place.

Supporting and dissenting Views: Leeds City Council Public and Private Partnerships Unit (LPPPU), who have been advisors throughout the PFI process would support the signing of the code. There are no known dissenting views at this time.

APPENDICES:

CODE OF CONDUCT FOR OPERATIONAL PFI/PPP CONTRACTS

Purpose

The Code sets out the basis on which public sector bodies and their PPP partners (investors, lenders, construction contractors and service providers) agree on a voluntary basis to identify and deliver efficiencies and savings in operational PFI and PPP contracts.

It supports a collaborative approach to working together and its intention is to enhance the long term partnership between parties through developing an improved and informed working relationship.

It is recognised that due to the multi party nature of PFI/PPP projects it may not be possible for individual signatories to deliver efficiencies and savings on behalf of their partners. The commitments set out below should therefore be interpreted and applied by each party in the context of the involvement and role of that party in each transaction. However, in signing up to this Code, parties commit to identifying and delivering those efficiencies and savings which they are directly able to do while at the same time proactively supporting the delivery of efficiencies and savings by others.

Details of signatories to the Code will be published on the HM Treasury website.

Applicability of Code

The Code applies to all operational PFI and PPP contracts across central and local government and the NHS. The Code is voluntary and is not intended to be legally binding. It does not seek to add to, amend or replace the existing project specific contractual agreements that are in place for each operational project.

Private sector commitments

Private sector parties to the Code commit to:

1. Provide, or agree, in conjunction with their PFI/PPP partners a single local point of contact for each project. The point of contact will have responsibility for co-ordinating the activities and collating the views of all the private sector parties on a project and will also represent the private sector's views in discussions with public sector bodies.
2. Engage constructively and in a timely manner when approached by public sector bodies to make savings on a specific PFI/PPP contract or across their portfolio of PFI/PPP contracts, including but not limited to exploring the potential cost savings measures set out in the July

2011 guidance entitled “Making savings in operational PFI contracts”. This approach should be flowed down from senior management to contract managers to support effective engagement.

3. Contract managers meeting with their relevant public sector body on a regular basis to discuss what savings and operational efficiencies have been made and to identify opportunities for improvement.

4. Work to identify operational improvements and engage pro-actively with the public sector to develop and support with the provision of information joint strategies to deliver efficiencies and savings including:

- Promoting measures that will deliver cost savings and value for money for the public sector over the short, medium and long term.
- Suggesting measures which will provide added value to public sector bodies and which will assist those bodies in meeting their work priorities.
- Incorporating measures to ensure operational flexibility and the identification of ways of working which public sector bodies could carry out in order to ensure greater efficiencies.
- Participating in the identification and implementation of measures to optimise asset management and use (including the promotion of more flexible use of assets, for example, minimising charges for and blockages to out of hours usage).

5. Engage responsively when considering the type and price of variations, waivers, changes or approvals. Not unreasonably refuse to consent to these or make unreasonable charges for such consents. Where reasonable, implement the March 2008 Operational Taskforce

Note 3: Variations Protocol for Operational Projects to contracts which do not incorporate it or similar SOPC provisions.

6. Provide public sector bodies with clear and transparent information and evidence regarding a project’s consumables, energy and utility usage and unit costs. Provide appropriate assistance to encourage building users to reduce consumption and waste.

7. Where they are vendors or purchasers to inform the contracting public sector body, sponsoring department and HM Treasury or relevant devolved administration whenever ownership of project company risk capital (or economic interest) changes, providing details of the new ownership structure (investors, instruments and percentage held).

8. Ensure constructive engagement with their PFI/PPP partners, including the public sector, through the reasonable interpretation, taking account of professional responsibilities and obligations, of all existing rights and obligations set out in the project documents so as to facilitate a clear understanding by the public sector and its stakeholders of the costs and benefits of efficiency and savings opportunities.

Public sector commitments

Public sector parties to the Code commit to:

1. Provide a single point of contact who will have responsibility for co-ordinating the activities and collating the views of the public sector contracting party on a specific project and representing these views in discussions with private sector bodies.
2. Engage constructively and in a timely manner when dealing with private sector parties on specific PFI/PPP contracts.
3. Meet with their relevant private sector contract managers on a regular basis to discuss what savings and operational efficiencies have been made and to identify opportunities for improvement.
4. Work to identify options for operational improvements and engage pro-actively with the private sector to develop joint strategies to deliver efficiencies and savings.
5. Give reasonable and prompt consideration to measures and issues promoted by the private sector taking into account policy and practice requirements and commercial considerations.
6. Provide appropriate public sector resources and skills to ensure that any engagement with their PFI/PPP partners is as efficient and effective as possible.
7. Ensure that any engagements take into account the costs likely to be incurred by all parties and the economic benefit likely to be gained and act to minimise unnecessary expenditure.
8. Ensure constructive engagement with its PFI/PPP partners through the reasonable interpretation of all existing rights and obligations, taking into account statutory obligations and public service needs, set out in the project documents so as to help ensure that the private sector costs associated with realising efficiencies and savings are proportionate.