

A SHORT GUIDE FOR NEGOTIATORS ON HOW TO DEAL WITH CONTRACTING OUT, OUTSOURCING AND/OR AGENCY LABOUR



More and more companies are seeking to reduce the size of their core workforce by contracting out jobs either directly, or through an employment agency. This short guide has been written to assist trade union negotiators faced with this situation.

1

MAKE SURE YOU INCLUDE DETAILS ON EMPLOYMENT STANDARDS IN CONTRACTS FOR SUBCONTRACTING OR AGENCY WORK

Check that your company's standard request for subcontracting or agency work includes all relevant clauses from the existing collective bargaining agreement.

- 1 The work should be of the same quality and standard
- 2 The workers' terms and conditions are the same as with the present employer
- 3 Make sure that bidders for the contract are asked, as part of their bid, to provide a statement on how they will deal with such issues as: freedom of association - child labour - equality issues - health and safety issues - training - employment relationships - salary and working hours - pension rights - redundancy policy
- 4 Bidders should be asked to provide examples of employment conditions, as used in their current or previous contracts. This could include information on how earlier transfers of employees to their company were done, and under which conditions

The first objective of the trade union should be to convince the company that it may not be necessary to contract out the work. If this fails, the second phase should be, where local legislation allows it, to insist that all workers who will be working for a contractor or an agency are covered by *the same collective bargaining agreement* as the permanent employees, and are entitled to the same wages and other benefits.

The best practice is to get a clause stating that the union will be involved in subcontracting in your collective bargaining agreement - long before contract or agency labour discussions are brought to the table. The goal is to make sure that your union will be involved in all subcontracting processes. It is easier to negotiate such a clause if the issue is not (yet) under negotiation, and it gives your union the guarantees it needs for when the problem arises.

A standard clause, as used and advocated by the *ICEM* is as follows: "[Company] agrees that it will not as a general policy use contract or agency labour, except in those instances where it is agreed as unavoidable. In the event that the company is considering employing contract or agency labour, it will – before any third party contracts are signed – *consult with the unions* representing workers that could be affected. The company will ensure that the union representatives are provided with all relevant facts. If the use of contract or agency labour is agreed, the company will ensure that union representatives have the right to meet any contractor or agencies who the company may wish to be considered for such contracts."

2

MAKE SURE YOUR UNION IS INVOLVED ACTIVELY IN THE SUBCONTRACTING PROCESS

Your union should be allowed to be an integral part of any subcontracting or outsourcing process. This includes:

- 1 Having discussions on the viability of the subcontracting deal
- 2 Being allowed to take part in the negotiating process
- 3 If the decision is taken to contract out to another company, the union will be given the chance to interview the possible candidate subcontractors. Where agency labour is used, the union should be able to influence the decision on which agency to use
- 4 The union needs to be able to follow and influence the negotiations
- 5 Ask the company for the right to comment on the draft evaluation criteria to make sure that employment issues are given proper weight. For example, the company may prefer to contract out to the lowest bidder, without setting any other conditions. Unions must insist that the contractor also provides good employment conditions
- 6 Consider nominating an independent observer to the tender evaluation panel, someone like a lawyer, accountant or someone with particular expertise relevant to the project. This will help ensure that the tendering process is transparent and ensure that all technical issues are fully understood on the trade union side
- 7 Get agreement to meet the union members on a regular basis, during company time, and with pay, so that they are kept up to date on the negotiations and can ask questions on how the company proposals will affect them

3

COLLECT AND DEMAND FROM YOUR COMPANY ALL RELEVANT BACKGROUND INFORMATION

Your union will need to be given all necessary background information. This includes information on:

- 1 Why does the company want to use contract or agency labour?
- 2 Who is involved in the decision making process inside your company?
- 3 On what available information is the decision made to contract out, or to use agency labour? ('Having the lowest bid' is not the only, nor the best, possible reason to make a choice between different tenders)
- 4 In the case of contracting out to another company, information is needed about the contracting company, its legal status, its record of labour practices. Where do they operate? What is its know-how in the area of work it is tendering for, and what technical expertise does it have in this field?
- 5 Look, as much as possible, at the details of the planned restructuring. Which departments are concerned? What positions are affected? How many people will be outsourced? Are there any redundancy plans? What happens to the workers who stay? What are the conditions of the transfer and of the future employment? Will the same conditions apply to workers that join the workforce after the transfer? What is the timetable for the transfer?
- 6 Make sure you obtain copies of all proposals from subcontractors
- 7 Seek regular meetings with the employer, as well as with the contractor, or labour agency, throughout the negotiating period

ICEM

54bis route des Acacias
1227 Geneva, Switzerland
Tel: +41 22 304 1840
Fax: +41 22 304 1841
contract.labour@icem.org

www.icem.org

4

ENSURE THAT THE EMPLOYER PROVIDES FULL DETAILS OF THE PROFITABILITY FOR CONTRACTING OUT

Check that the company's case includes:

- 1 Full comparison of costs. The company should give the union full financial information, comparing the costs of using directly employed workers with the cost of working with subcontracted or agency labour
- 2 Make sure that one-off costs, such as redundancy payments and capital expenditure are included
- 3 Ask which other options have been considered by the company, if any. Other options should not only include other ways of contracting out, but also ways to deal with the issue internally
- 4 Ask how these options were assessed

5

ENSURE THAT THE SUBCONTRACTOR'S OR AGENCY'S CONTRACT PROPOSALS INCLUDE ALL RELEVANT CLAUSES FROM EXISTING COLLECTIVE BARGAINING AGREEMENTS

Ensure that each proposal contains details on:

- 1 Whether the workers will receive the same wages and conditions as they do now
- 2 How will the subcontractor or agency deal with employment issues?
- 3 Are all of the following topics dealt with: policies on freedom of association, child labour, equality issues, health and safety issues, training, employment relationships, wages and working hours?
- 4 Your employer should also ask for details of any disputes that the candidate contractors have been involved in, within the last three years, with other companies or with trade unions, and whether there are – or have been – any court cases involving employees or former employees

6

ENSURE THAT THE SHORTLISTING OF SUBCONTRACTORS OR AGENCIES IS BASED ON THEIR EMPLOYMENT TRACK RECORD

Ensure that each proposal contains details on:

- 1 Make sure that the employer has taken all relevant information on the subcontractor's employment track record into account when shortlisting. For example, if the company has been known for violating national or international labour standards, they should not be considered further
- 2 Make sure that the evaluation criteria are adhered to in your company's selection process of the subcontractor
- 3 If you feel that the choice of contractor has ignored these employment concerns, seek an urgent meeting with the employer

7

ARRANGE FOR SHORTLISTED BIDDERS TO BE INTERVIEWED BY YOUR TRADE UNION

Ensure that each proposal contains details on:

- 1 Make sure you have the information provided by each shortlisted bidder on employment issues, as well as on general competence, and make sure you have a copy of the specifications for the subcontracting project
- 2 Decide who will lead on behalf of the trade union
- 3 Are there other unions involved? If so, try to form an alliance with them, so as to provide a united front against the company
- 4 Do you want a representative of your employer to sit in at the interview? This could be useful as they can provide an independent record of what was said. It will also demonstrate that you have a working relationship with your employer
- 5 Decide who will take the notes of the meeting
- 6 Decide whether you want to start by giving a brief presentation about the union. Some contractors may not know much about unions
- 7 Arrange to report back to the employer on the results of each interview; discuss your concerns and ask how the employer intends to address them

8

ENSURE THAT THE DECISION IS CLEARLY COMMUNICATED TO ALL EMPLOYEES, AND THAT ARRANGEMENTS ON MONITORING ARE MADE

Ensure that the employer gives a full explanation of its decision to award a contract to a subcontractor or an agency. This should include an overview of estimated savings.

- 1 Ensure that, if possible, all the contract workers are organised into your union. Alternatively, contract or agency workers can also be organised in a separate union, for example in those cases where it is legally, or practically, not possible to organise them into your own union. In those cases, make sure that your union has a good working relationship with the union that organises the contract and agency workers, as you are likely to need their support in case of an industrial dispute. Close co-operation also avoids situations where your employer can play out one union against another, or one category of workers against another. Regular meetings between the different unions are helpful in this respect
- 2 Ensure that you are aware of how the outsourcing company intends to monitor the arrangements made with the subcontractor or agency
- 3 Ensure that your union also monitors the arrangements with the subcontractor and reports any problems to the main employer
- 4 Make sure these standards and monitoring arrangements are written into contracts
- 5 Ensure that appropriate penalties are in place for when violations of these arrangements occur, and get assurances from your company that these will be applied where needed, also in the case of trade union rights violations

7

Suggested topics for interviews - 1- Time table for the transfer **2-** Employment relationships (for example, will there be sub-subcontractors?) **3-** Terms and conditions (questions about wages and benefits) **4-** Equal opportunities **5-** Health and safety **6-** Recognition of the trade union, freedom of association **7-** Future staffing changes (are redundancies expected?) **8-** Planned changes to working practices (working hours and management structure) **9-** Training and development **10-** Pension rights **11-** Redundancy policy **12-** Will the subcontractor agree to recognise the current trade union?

