

CIPFA Procurement Webinar

Managing TUPE & Pension Pitfalls in Tenders

Webinar – Zoom

12 December 2024

Purpose

This event from CIPFA Procurement Network will help practitioners understand the often complex and tricky situation relating to TUPE and Pensions, when involved in tenders and outsourcing/ insourcing services. Failure by the authority to correctly apply TUPE Regulations can be very costly and can prejudice the outcome of the tender process. The event will be practically focused and help to answer routine queries relating to the application of TUPE and Pensions issues in tenders. It will cover how contracting authorities can deal with an incumbent supplier who is refusing to disclose required TUPE Employer Liability Information to include in tender documents, how the 'percentage test' applies in practice, dealing with 'phantom workers', as well as tips on evaluating TUPE information and influencing the 'Measures Letter'.

Learning Outcomes

How will you benefit?

Key learning outcomes include:

- Understand your obligations under TUPE to ensure compliant tender processes.
- Learn how to package your Associated Tender Documents TUPE and pensions data.
- Understand which staff are protected by TUPE with reference to real life case studies in the context of tendering or insourcing public services.
- Learn what could happen in the event of incorrect information supplied by the incumbent supplier, and the potential impact on tender process/ prices.
- Find out when employers should consider pensions issues, and what could happen if those issues are not addressed appropriately?
- Updated event to reflect changes under Procurement Act 2023.

Who Will Benefit

The webinar will support procurement, finance, solicitors, project managers, HR, auditors and contract managers with day-to-day responsibilities for seeking tenders and managing suppliers.

Programme

09.20 – 09.30 **Join the Webinar**

09.30 – 09.40 **Welcome, Introductions and Overview of the Webinar**
Mohamed Hans, Solicitor, Procurement Advisor,
CIPFA Procurement & Commissioning Network

09.40 – 11.15 **TUPE – Avoiding the Pitfalls**
The application of TUPE in public procurement, outsourcing or when setting up alternative service delivery vehicles is a challenging and complex issue. It requires practitioners to have detailed understanding to ensure that the authority achieves its objectives. This session will cover practical TUPE hurdles which often arise, including:

- when does TUPE apply?
- commissioning and transferring services to a new provider
- service provision changes – since 2006
- the main effects of TUPE
- challenges when re-tendering contracts
- relying on express clauses, TUPE Regulation or chance!
- duty to consult and inform
- content of the ‘measures letter’
- assignment to organised grouping

11:15 – 11.30 **Comfort Break**

11.30 – 12.40 **TUPE – How it Applies to the Procurement Process**
This session will continue with further content and then have an open discussion to consider specific day-to-day scenarios and practical issues faced by authorities in tenders:

- what issues/ challenges can TUPE present?
- providing Employee Liability Information on time
- staff and percentage of time clarification
- tender documents and TUPE
- evaluating TUPE issues
- application of TUPE to Frameworks and call-offs
- TUPE and Procurement Act 2023

12.40 – 13.25 **Lunch**

13.25 – 14.10 **TUPE and the Associated Tender Documents**
This session will cover key points to include in the associated tender documents, and dealing with specific TUPE information, followed by practical group work exercises. The session will also cover common issues for the commissioner, incumbent supplier and the new supplier.

14.10 – 15.00

Understanding Pension Liabilities

Pension obligations are a key risk in public tendering and outsourcing due to the escalating costs. If this is not managed adequately from an early stage, problems can occur later which can disrupt contract award formalities. This session will cover:

- importance of making pension data available early
- pensions obligations and exit provisions in current contract
- when should you calculate pension costs?
- the new “Fair Deal” – who does it apply to?
- what happens when existing contracts are retendered?
- which pension rules apply to local/ fire/ NHS authorities?
- what is the ‘section 75’ debt?
- harmonization of terms and conditions
- the Admission Agreement – key terms
- dealing with new staff in trading companies

15.00 – 15.20

Online Poll Assessment

This session will include a series of questions based on the earlier sessions and delegates will be able to take part to support and enhance the learning experience.

15.20 – 15.25

Discussion, questions & close



CIPFA Sustainability Policy

CIPFA is delivering all of our training courses, workshops and seminars in accordance with our sustainability strategy. We do not provide hardcopy course materials to delegates and these are now distributed by email in advance of the event. We are striving to reduce our carbon footprint in every way that we can, and we hope that we can count on your support.