

City of Edinburgh Council
Hard Facilities Management Procurement
- a review for CEC Unison and Unite



SCOTTISH HAZARDS

March 2022

Background

Scottish Hazards is an occupational health and safety charity. Our work includes providing advice and support to workers who are not in trade unions, providing responses to consultations designed to inform public policy decisions on matters related to work related ill-health, injury or disease as well as delivering training and development for a growing community of health and safety representatives on less mainstream issues that, nevertheless, impact on the health and safety of workers.

Our most recent course looked at public procurement and opportunities arising from the annual £14.5 billion spend by public bodies to ensure workers participating in publicly funded contracts can enjoy fair, healthy and safe work in line with the Scottish Government's commitment to the fair work agenda as well as the legal obligations placed on employers to ensure the health, safety and welfare of their workers.

The course materials included two papers in a series Delivering Healthy, Safe and Fair Work, the first examining opportunities to drive change¹ and the second looking at potential actions to implement positive change² in the approach public bodies take to promoting fairer, safer and healthier work throughout their supply chains.

Participants recounted experiences that led us to believe public bodies may not be following Scottish Government guidance on public procurement including excluding trade unions from tendering processes. Scottish Hazards sees this as an opportunity missed as well as a failure to ensure workers delivering these contracts enjoy fair work.

This paper highlights the concerns of Unison and Unite in Edinburgh City Council in relation to the award of a contract to provide hard facilities management services across a wide range of buildings and monument owned by the Local Authority.

The contract worth up to £180 million over 10 years was awarded jointly to Skanska Construction Services UK and Mitie Facility Management.

The Procurement Journey, guidance that public bodies should follow when purchasing goods and services states, ***“Good procurement is not just about buying well but it's often about buying less or, indeed, not buying at all”***, it suggests some questions public bodies might want to ask stakeholders including ***Have alternatives to procuring been considered and ruled out?***

¹ Delivering Healthy, Safe and Fair Work, using procurement to drive change <https://www.scottishhazards.org.uk/wp-content/uploads/2022/02/Procurement-Paper-One.pdf>

² Delivering Healthy, Safe and Fair Work, public procurement actions required for safer, healthier and fairer work

This is the root of the trade union concern, there was no consultation with Unison, Unite or any other recognised trade union prior to the commencement of the procurement that led to the appointment of Skanska Construction Ltd and Mitie Technical Facilities Management on whether this procurement exercise was necessary. Nor was an alternative method of delivery of facilities management services investigated in consultation with trade unions potentially one offering more secure employment, greater skills development and more benefits to the community than these contracts offer.

In our view consultation late in the day as witnessed in this procurement is not meaningful consultation, it was an exercise to communicate a decision already made to further privatise delivery of services previously delivered by public sector workers.

In the foreword to the City of Edinburgh Council's consultation on the proposed Commercial and Procurement Strategy December covering 2016 to March 2020³ the Council aims to continue on its journey of change and innovation by taking a number of actions including increasing the level of collaboration internally and externally, one of a number of actions aimed at ensuring ***“the Council will be in the best possible position to provide a fit-for-purpose procurement service to the benefit of all stakeholders”***.

In the Council's latest five-year procurement strategy⁴ this commitment appears to be strengthened and the Council's Procurement vision is outlined in the introduction by the Executive Director, Dr Stephen Moir

Council's Procurement Vision

To be a leader in Scottish public sector procurement and contract management, with a high-performing customer-focused Commercial and Procurement Services team that identifies, creates and secures significant financial and non-financial benefits for the city of Edinburgh. A team that works collaboratively with colleagues, key partners and citizens, and visibly drives positive change within the Council.

This vision statement has been developed by the Council's procurement team to support implementation of this strategy and delivery of its key objectives.

It is hard to see why the Council can argue this to be the case if trade unions as stakeholders and social partners are not being consulted on significant procurement exercises such as this one.

³ Consultation on City of Edinburgh Council's Commercial and Procurement Strategy December 2016 to March 2020, [CPS Strategy draft for consultation 2.pdf \(edinburgh.gov.uk\)](https://www.edinburgh.gov.uk/downloads/file/29865/sustainable-procurement-strategy)

⁴ City of Edinburgh Council Sustainable Procurement Strategy March 2020 to March 2025, Page 3, <https://www.edinburgh.gov.uk/downloads/file/29865/sustainable-procurement-strategy>

Following discussions with the trade unions concerned Scottish Hazards submitted a request for information under the Freedom of Information (Scotland) Act 2005 to try and understand the reasons City of Edinburgh Council had ignored the trade unions in the process and whether they had followed statutory or other guidance on public procurement.

The questions we asked are attached as an appendix and our analysis of the response follows in the next section.

Freedom of Information Request

Following discussion with a Unison representative in Edinburgh City Council Scottish Hazards submitted a request for information under the Freedom of Information (Scotland) Act 2002.

Our aim was to ascertain the length of the procurement process, the level of engagement with the recognised trade unions, the questions asked on fair work and health and safety as well as arrangements for monitoring the performance of the principal contractors and any other employer subcontracted to carry out work. The full response can be found on Edinburgh City Council's Disclosure Information Log⁵

From the response we received we have concluded

The procurement process started in 2018 and concluded on the 20th May 2021 when the Finance and Resources Committee agreed to award the contracts for hard facilities maintenance Services to Mitie Technical Facilities Management Ltd and Skanska Construction UK Ltd.

One of the objectives of the exercise was to ***“have an estate that was safe, accessible and compliant with statutory legislation – make safety of building users the top priority”***. If this is a genuine objective Scottish Hazards would have expected evidence of consultation with the representatives of those who use these buildings for work purposes, Edinburgh City Council's care home workers, teachers, janitorial staff, admin staff and all the Council's 14759 workers.⁶

The Scottish Government's Procurement Journey states that public bodies should identify stakeholders⁷ who may have an interest or concern in something, e.g. an activity or a business. This goes on to suggest that for procurement processes a User Intelligence Group (UIG) should be created to assist with the following;

- developing the commodity/service strategy,
- the tender evaluation
- the ongoing activities of contract/supplier management,
- monitoring,
- implementation,
- compliance and
- benefits tracking

⁵ Skanska Construction UK and MITIE Technical Facilities Management Ltd
<https://edinburgh.axlr8.uk/documents/35153/EDIR35153%20Response.pdf>

⁶ The City of Edinburgh Council Key facts and figures 2020-21
<https://www.edinburgh.gov.uk/downloads/file/28261/2020-2021>

⁷ Procurement Journey Scotland – Stakeholder Identification <https://www.procurementjourney.scot/route-3/develop-strategy/stakeholder-identification>

Edinburgh City Council did not create a UIG but felt justified to go against Scottish Government advice that a UIG **should** be created, instead appointing a project board whose membership appear to be solely in house specialists to oversee the procurement process. There appears to have been no involvement of any specialists with a human resource background or any expertise in the fair work agenda. Scottish Government guidance suggest purchasers should consider using the expertise of trade unions when considering fair work questions. It is also disappointing that the health and safety expertise of trade unions, expertise acknowledged by the HSE and across the world, appears to have been ignored. Trade union reps , acting on behalf of their members are the eyes and ears in all workplaces, they challenge unsafe working practices and unfair work. It is trade unions that members will come to with concerns about the workers and subcontractors delivering this contract. Edinburgh City Council has not just ignored the collective voice representing their employees it has, on this occasion, failed to recognise the positive role their recognised trade unions could bring to the process.

The Scottish Government consulted with trade unions when they undertook a similar procurement for hard and soft facilities management, and we would question why Edinburgh City Council adopted a different approach. The Scottish Government provides 85% of funding for Scottish Local Authorities and we would hope pressure could be brought to bear to ensure trade union involvement in procurement processes, particularly in contracts of high value such as this and where the services or goods being purchased may impact of the health and safety of workers or the quality of their working lives.

The fact that the response to our information request show trade unions were not consulted is concerning, as are the reasons for Edinburgh City Council believing they had no need to do so. The Council rightly identified trade unions as stakeholders but appear to have limited this interest to matters relating to terms and conditions and industrial relations.

Scottish Government guidance encourages contracting authorities meet with stakeholders on a 1:1 basis and to ensure stakeholders are encouraged to contribute to procurement processes. Edinburgh City Council admit that they failed to meet with trade unions and as a result it follows they were excluded from their opportunity to contribute to the process.

The Procurement Journey Leadership and Governance pages includes the following ***“procurement must be engaged and represented at all levels throughout the organisation, from grass roots through key stakeholders/steering groups to organisations board (or equivalent) with procurement being discussed regularly (if not a standing agenda item)”***.

Examination of agendas from the Finance and Resources Committee would tend to suggest that while individual decisions are included on agendas for sign off, wider discussion on how procurement is managed is not and certainly does not appear to include input from trade unions.

Information on both successful tenderer's responses to questions on fair work and health and safety was refused on the ground of commercial confidentiality. This is deeply concerning as it appears to rule out any opportunity for the information provided by Skanska Construction UK Ltd or Mitie Technical Facilities Management Ltd in support of their bid to be scrutinised in any way.

The Scottish Government expects companies in receipt of publicly funded contracts to make a public commitment to fair work and this includes ensuring tenderers make reference to providing fair work and supporting Scotland's fair work agenda. In Scottish Hazards view responses evidencing the commitment of economic operators to fair work and health and safety questions are in the public interest and should be in the public domain.

Finance and Resources Committee

The proposals to tender for suppliers for the new arrangements were considered by the Committee on three occasions in 2018, 2020 and 2021 as far as we can see.

On 16 August 2018⁸ members of the Committee agreed to extend the contracts of previous providers. Agenda item 9 states that briefings have been provided on this issue to each political group and consultation has taken place with service users and departments.

At a further meeting of the Finance and Resources Committee on 5 March 2020⁹ Agenda Item 4.5 reports on the work so far undertaken by the Project Board. As outlined earlier, the Council chose not to set up a User Intelligence Group as advised by the Scottish Government but instead went for an in-house group consisting of procurement, finance and asset management professionals. From the list of membership provided to us there would appear not to have been representation from the Council's Health and Safety or Human Resources Department and certainly not from trade unions.

The report on progress included areas of work

- *stakeholder mapping and engagement with end users including the pupils of each high school who form part of a working group to establish and promote which community benefits, work opportunities and environmental benefits they feel would be most beneficial to them;*
- *creating a community benefits strategy aimed at apprenticeships and employment opportunities for long term unemployed. There will also be a focus on supporting the skill shortage in the construction industry for trades such as stonemasonry and carpentry;*
- *to improve processes and procedures to ensure a more enhanced customer experience for the building users through improved technology and communication;*
- *drafting of a scope which complies with all relevant policy, legislation and Council charters such as the Construction Charter.*

In each of the above points Scottish Hazards might have expected trade unions to have been consulted.

⁸ Finance and Resources Committee 16 August 2018

https://democracy.edinburgh.gov.uk/Data/Finance%20and%20Resources%20Committee/20180816/Agenda/item_716-extension_to_the_existing_property_repair_and_maintenance_contracts.pdf#search=%22asset%22

⁹ Finance and Resources Committee 5 March 2020 <https://democracy.edinburgh.gov.uk/documents/s14799/7.4%20-%20Extension%20to%20Repairs%20and%20Maintenance%20Contracts.pdf>

In the first bullet point it is reported pupils formed part of a working group to establish the aspect of these proposals that interest them, yet no similar group was considered appropriate to protect the interests of a significant population of end users, those trade union members who work in Edinburgh’s public buildings and parks as well as looking after city’s monuments.

While it is not surprising given the make-up of the project board there appear to have been an absolute lack of awareness of the role trade unions have in Scotland’s skills agenda. In our view trade unions should be consulted on any proposals where skills, apprenticeships and future work opportunities to ensure such opportunities are based on the principles of fair, healthy and safe work.

In relation to the third bullet point we would argue trade unions should be involved in discussions on any proposals to deliver a “more enhanced customer experience for building users”. The Project Board once again to be side-lining trade unions as representatives of trade union members as building users.

Of greatest concern is the Project Board claims to have drafted a scope which *complies with all relevant policy, legislation and Council charters such as the Construction Charter.*

In our view examination of the Construction Charter would suggest otherwise, this will be looked at in more depth in the next section.

On the 20th of May 2021, the Finance and Resources Committee¹⁰ was asked to ratify the decision to award the £180 million hard facilities maintenance to the two companies. Again, this report mentioned the complexity of the exercise including a significant volume of stakeholder and end user consultation, again it is evident they excluded trade unions and their members as neither stakeholders nor end users.

Amongst the strategic objectives of these proposals was to have a property estate that makes the safety of building users the top priority, nobody would dispute this, but how this will be achieved having not consulted with trade unions (as the effective voice and representative bodies of these building users) is not clear to Scottish Hazards.

Agenda Item 7, Stakeholder and Community Engagement asserts ***“the Project Team have conducted significant consultation and collaboration to ensure excellent benefits in relation to sustainability and impact on the City of Edinburgh”***, not one mention is made within this section of trade unions or City of Edinburgh Council

¹⁰ Finance and Resources Committee Meeting 20th May 2021

<https://democracy.edinburgh.gov.uk/documents/s34056/7.5%20-%20Hard%20Facilities%20Management%20Services%20Delivery%20Partners%20Award%20of%20Contracts.pdf>

employees as stakeholders or evidence presented to the Committee support this assertion.

The paper concludes that the evaluation panel consisted of Technical Officers from Property and Facilities and external expert advisers, no details are given on who these advisers were and the expertise they brought to the process.

The webinar of the May 2021 meeting of the Finance and Resources Committee also raises questions that, in our view, the City of Edinburgh Council require to answer.

Council Officers state the specific procurement process now subject to concerns about lack of consultation started in 2016 and unions were consulted at that time. There was a previous exercise involving an internal transfer of City of Edinburgh Council employees from one department to another. The procurement process in question and the only one presently of concern to Unite and Unison is the one awarded to Skanska Construction (UK) Ltd and Mitie Technical Facilities Management Ltd for the provision of hard facilities management services. This single procurement exercise was published on the Public Contracts Scotland¹¹ website on 7th October 2019.

Our assurance is that no discussion took place in relation to this specific tendering exercise between council officials and any trade union until a meeting was arranged on May 9th, 2021, 9 days before City of Edinburgh elected members sitting on the Finance and Resources Committee were asked to agree the award of the contracts. Stephen Moir, City of Edinburgh Council Executive Director for Corporate Service said in that meeting that he had notes of the meeting on the 9th May and could produce notes of others given time. Scottish Hazards finds it hard to believe minutes exist of meetings that have not apparently taken place.

Prior to this meeting a deputation from Unite attended the Finance and Resources Committee to request a decision to award these contracts was postponed allowing for investigation of potential areas of work that could be brought in-house.

They argued this would lead economic recovery by creating secure public sector employment opportunities, it would relieve existing stress levels in an already anxious workforce and it would allow for development of existing Council employees.

An elected member of the Council asked a question of the deputation regarding trade union consultation, the Unite the Union CEC Convenor responded that the CEC

¹¹ Public Contracts Scotland:

https://www.publiccontractsscotland.gov.uk/search/show/search_view.aspx?ID=OCT368084

had not been consulted at any time and, in an effort to be helpful, suggested that they may have consulted Unite's construction sector but no consultation took place with the branch, the body who represents Unite members in City of Edinburgh Council.

This was an effort to be helpful but the suggestion that consultation "may" have taken place elsewhere in Unite, was later misrepresented in the discussion in Committee when a Council Official stated that he was "going to make absolutely no comment on the significant failing of Unite's internal communications".

Whether discussion took place or not, and no evidence was presented to say they did, in our view he chose to make comment on that very subject, one that could not be substantiated and was unprofessional.

The existence of the notes to meeting Unison and Unite dispute ever taking place appears to have been accepted by the elected members without question. This really is at odds with the information provided to us by the unions and by the City of Edinburgh Council in their response to the Freedom of Information and the particular question relating to meetings with trade unions.

We asked

"How many meetings took place between City of Edinburgh Council and trade unions regarding this procurement exercise, and with which trade unions?"

City of Edinburgh Council responded

"None. The substantive change from using Edinburgh Building Services (EBS) to deliver Hard FM Services took place in 2016 when EBS stipulated that they could no longer deliver the requirement and withdrew their services. This resulted in the Hard FM Services being fully delivered by external contractors which were appointed through a competitive procurement process. The subject procurement process is a replacement for the existing externally delivered service that has been in place since 2016 with no impact on staff other than a change of supplier".

Confirmation that trades unions were not consulted.

However, the response then goes on to conflate this procurement exercise with previous arrangements. Scottish Hazards is of the view that the circumstances are completely different. Edinburgh Building Services, presumably an arm's length company owned by the City of Edinburgh Council, gave notice it could no longer deliver the requirement. It is fact that discussions took place with the unions in relation to redeployment of council employees. In our view this must be a separate

exercise from the 2016 tender and any trade unions concerns or otherwise relating to the previous procurement should be sperate from those relating to the most recent exercise. Once again City of Edinburgh Council express a view that no consultation was necessary as there was no impact on staff other than a change of supplier.

Scottish Hazards disagrees with this view, we believe the Scottish Government has always been clear on the need to engage with stakeholders since procurement legislation was introduced. The Procurement Journey outlines the process that should be followed for individual procurement processes.

We see no reference in the Procurement Journey that suggest it is acceptable to engage with trade unions on one procurement, in this case the transfer of work from EBS to supply chain companies in 2016 and take this consultation as applying to any future re-tendering exercise. There seems to no rational explanation as to why Council Officers think the 2016 procurement exercise and the one concluded in May 2021 are one and the same for consultation purposes, In this second procurement exercise there is no evidence of union consultation as far as we can see other than a meeting to communicate the proposal to be presented to the Finance and Resources Committee in May 2021.

Scottish Government Statutory Guidance

Scottish Hazards is finding it difficult to reconcile the approach taken by City of Edinburgh Council in this particular procurement and the legal obligation to follow Scottish Government guidance.

In the introduction to the statutory guidance under the Public Procurement (Scotland) Act 2014 the Scottish Government states

“Only with Government working in partnership with the wider public sector in Scotland, the third sector, trade unions, businesses and communities, will we be able to create a society where the benefits of economic growth are shared more equally and where future economic growth is stronger and more sustainable as a result”.

This guidance **does not** state that partnership with trade unions is only necessary when there is an impact on jobs arising from a procurement. This appears to be the only reason given by City of Edinburgh Council for refusing to consult with trade unions.

The guidance states that contracting authorities should consult with stakeholders on community benefits clauses in procurement contracts and lists some examples where consultation is advisable including potential to upskill the existing labour force. This is central to the trade unions argument and fuels their concerns at not being consulted.

They argue that had trade unions, particularly Unite and Unison been consulted and their views on the potential to take some of the services back in-house been taken into account the procurement would be seen to have been carried out in an open and transparent manner. Instead by failing, in our view, to follow Scottish Government guidance by not entering into dialogue regarding this substantial procurement exercise and ignoring trade union concerns as key stakeholders and social partners City of Edinburgh Council have undermined their own procurement vision.

City of Edinburgh Council Procurement Strategies

City of Edinburgh Council has now published two procurement strategies the first covering December 2016 to March 2020¹², succeeded by one for March 2020 to March 2025.¹³

The procurement strategies appear to have been developed in line with the statutory guidance and the procurement exercise in question stretches across both periods. The contract having been posted on the procurement Scotland website in October 2019.

In the first strategy document reference is made to the Capital Coalition's pledge and the commitment to "use public social partnerships and other co-production models for service and contract designs which focus upon the needs of the user and the wider community".

Scottish Hazards believes that any public body committed to co-production should recognise the benefits on engaging with trade unions in design of public services impacting on their members but also their role in maximising community benefits and delivering fairer, safer and healthier employment opportunities.

Scottish Hazards believes co-production should involve all trade unions recognised by any employer.

In 2013 the TUC published a document "Making co-production work - lessons from local government"¹⁴ and reference is made to a study by APSE and commissioned by Unison highlighting the benefits of co-production models involving trade unions

"APSE's study of trade union involvement in service improvement for Unison gives powerful examples of the importance of employees and their representatives participating in decisions over services and includes cases where the close relationship between front-line staff and service users resulted in more effective design and delivery".

City of Edinburgh Council's Procurement vision in its 2020-25 procurement strategy is laudable including a commitment to be a ***"team that works collaboratively with colleagues, key partners and citizens and visibly drives positive change within the Council"***. The strategy goes on to say the vision statement has been developed by

¹² City of Edinburgh Council Commercial and Procurement Strategy March 2016 to April 2020

¹³ City of Edinburgh Council

¹⁴ Making co-production work - lessons from local government, April 2013, <https://www.tuc.org.uk/sites/default/files/APSE%20making%20co-production%20work%20in%20local%20government.pdf>

the Council's procurement team to support implementation of the strategy and its key objectives.

The most recent strategy develops the commitment to co-production and in Appendix 2, Mandatory Requirements of the Procurement Reform (Scotland) Act 2014 and Statutory Guidance Obligations makes further reference to co-production.

In this appendix the Council acknowledges its obligation to produce a statement on the Council's general policy on consulting and engaging those affected by its procurements.

In the strategy City of Edinburgh Council claim to have

1. embedded co-production in its procurements using different approaches that align with the requirements and impact of change where appropriate. This is included in the Contract Standing Orders and will continue in the new strategy, and
2. to ensure effectiveness, reviews will take place to identify what is working well and what can be improved to ensure communities, users of Council services and interest groups are involved in key procurements eg the provision of care to children and adults

In our view procurement of facilities management services is a key procurement impacting on trade union members and other users of council properties. City of Edinburgh Council's understanding of co-production appears to differ from that of the TUC, Unison and APSE and the Council on this occasion do not appear to have adhered to their own Contract Standing Orders 1.3.1 (iv) ***that co-production with key stakeholders is planned as appropriate and proportionate to the nature of the proposed contract.***

In our view co-production sits well with the nature of this contract and we believe unions, as a social partner, should have expected to be involved in the design and delivery of the services to be delivered under the contract.

There has been no consultation with City of Edinburgh Council's trade unions on the fair work practices, co-production or the community benefits aspects of this procurement, again procurement officials in the Council appear to have ignored the need to give regard to Scottish Government procurement guidance.

Fair Work and Health and Safety

Scottish Hazards is concerned at City of Edinburgh Council's refusal to provide information on the responses from the two successful companies to question asked on fair work and health and safety. This refusal was based on the need to protect the commercial interests of the provider. We fail to see how responses outlining how bidders plan to ensure they meet their legal obligations to ensure the health and safety of their workers as well delivering the Scottish Government's expectation that fair work practices will be evident in companies delivering public sector contracts can be withheld. No explanation was given other than the opportunity for other providers to plagiarise their responses and secure an unfair advantage in other procurement exercises.

In the absence of this information, it is hard to express a view of the commitment by either provider to deliver fairer, healthier or safer work. The websites of both companies paint a positive picture of health and safety and matters closely related to fair work such as commitment to pay the living wage. However, the most basic of internet searches suggest Unite the Union's experience of industrial relations within these two companies is different.

Scottish Hazards would have expected City of Edinburgh Council to have conducted some form of due diligence on the responses to the health and safety and fair work questions set in this procurement and would argue the involvement of trade unions in informing, framing and evaluating questions in these areas which are of fundamental importance to trade unions and their members should have been a given.

There is also no indication of any arrangement in place to monitor fair work and health and safety performance. The elected members on the Finance and Resources Committee heard that the contracts would result in thirteen new internal posts in addition to upskilling of janitors. Out of these thirteen new posts, four would be involved in monitoring the performance of the contract and the quality of the work being undertaken. Two senior and two junior positions to oversee the contracts are to be created covering work on fabric and mechanical engineering aspects of the contract, yet not one position has been created to monitor fair work practices of the principal contactors and supply chain companies are apparently committed to; or to ensure they are meeting their legal obligations to ensure the health and safety of their employees and others impacted by their work.

There will be health and safety impacts for trade unions and their health and safety representatives. The fact that 85% of this work is to be sub-contracted to companies appointed by the principal contractors or perhaps even further sub-contracted has to be of concern to all recognised trade unions in the Council. For example, if a health and safety representative for one of the education unions witnesses a sub-contractor's employees working in a dangerous manner are they entitled to request work be stopped? who would the representative report concerns to? what happens if a health and safety representative witnesses a sub-contractor being abusive or threatening to one of their workers or a City of Edinburgh employee?

The Corporate and Procurement Services appears to be maintaining silence on both fair work and health and safety impacts arising from this contract. The lack of consultation and involvement of trade unions in these key areas of interest to them and their members, along with the low weightings given to health and safety and fair work in the evaluation panel makes us concerned, neither health and safety nor fair work have been given little consideration to the project group.

City of Edinburgh - Annual Procurement Report

In Section 2 of the Annex covering actions taken to ensure compliance with sustainable procurement, “Improving Fair Work Practices Adopted by Suppliers” include the following,

“A senior staff member in CPS represents the Council on the Fair Work Convention’s review into fair work in the construction industry, this review being supported by the Scottish Government”.

Yet the same Commercial and Procurement Service Department appear unwilling to engage with trade unions on fair work in their own construction contracts.

The exclusion from trade unions in this procurement, or any other for that matter is strange, as is the lack of any mention of consultation with trade unions in the annual procurement report for 2021.¹⁵ The Scottish Government supports the involvement of trade unions in procurement processes, particularly in relation to fair work, acknowledging their expertise in this area. Scottish Hazards would argue this should equally apply to health and safety.

The exclusion of trade unions also suggests a different approach taken by the Council when seeking expertise regarding health and safety/fair work aspects of this procurement compared to proposed actions to meet the Council’s 2030 net zero carbon target.

“Zero Waste Scotland and Sustainable Procurement Scotland supported design of specification and ITT questions on £180m Hard FM tender, awarded in following FY (2021/22), e.g. tenderers committed to fully electric fuel of vehicles for contract by 2023, 50% by contract commencement”.

Therefore, Zero Waste Scotland were consulted on content on the specification and content of questions to be included in invitation to tender documentation but the Council did not see fit to consult with trade unions on health and safety and fair work, areas where unions not only have expertise, but also where their members and many other workers will be impacted by the approach taken by the Council to ensure work carried out at every level of this contract is undertaken in a fair, safe and healthy manner.

¹⁵ City of Edinburgh Council Annual Procurement Report: Annex 2 – Compliance with Sustainable Procurement Strategy, [Landscape document templates \(edinburgh.gov.uk\)](https://www.edinburgh.gov.uk/landscapedocuments)

City of Edinburgh Council Construction Charter

As part of our review of this procurement we examined the City of Edinburgh Council's Construction Charter¹⁶. In our view this is the kind of document we would expect from any public sector employer wishing to use the substantial leverage available to them through procurement to improve health and safety at work and promote fair work. If we had one criticism of the charter it would be that it falls short or is not explicit enough in relation to fair work commitments.

The aims of this charter are highly laudable, but City of Edinburgh Council do not appear to have given much thought on how the charter will be implemented and the commitments monitored throughout the lifetime of the contract. Neither of the main contractors appear to be great supporters of trade unions or acknowledge their role in making construction a fairer, healthier and safer sector in which to work. Most of the work (85%) involved in this contract will be sub-contracted to SMEs within a reasonable distance of the sites.

This begs several questions

1. How many direct employees of Skanska Construction UK Ltd and Mitie Technical Facilities Management Ltd will be employed?
2. How do City of Edinburgh Council plan to ensure the work carried out by subcontracted companies will commit to supporting fair work and safe and healthy workplaces.
3. How will City of Edinburgh Council ensure any SME provided with work encourage trade union recognition where appropriate
4. What mechanisms will be in place to ensure supply chain companies will collaborate with trade unions.

The charter was published in August 2018, over a year before the contract notice was published on the Public Contracts Scotland¹⁷ website in October 2019. Despite the existence of the Construction Charter at the commencement of the process it would appear those in charge of this procurement have not followed the guidance laid down in the Council's own charter.

¹⁶ City of Edinburgh Council Construction Charter Commitments
<https://www.edinburgh.gov.uk/downloads/file/26035/construction-charter>

¹⁷ Public Contracts Scotland:
https://www.publiccontractsscotland.gov.uk/search/show/search_view.aspx?ID=OCT368084

Our concerns are as follows;

Construction Commitment - 1 High working standards

We commit to working with trade unions in order to achieve the highest standards including in respect of employment status, health and safety, standards of work and apprenticeship training.

The Council actively promotes a requirement to work in partnership with the trade unions and we expect those contractors who undertake work on our behalf to do likewise.

It is difficult to see how City of Edinburgh Council officials can believe they have adhered to the first commitment of their own construction charter. They have admitted in their response to our Freedom of Information request they did not meet with unions during the procurement of this contract apart from one meeting less than a month before the Finance and Resources Committee were asked to agree the contract award (yet the Executive Director for Corporate Services said to elected members at a meeting of the Finance and Resources Committee on 20th of August 2021 that minutes of meetings did exist although they could not be produced). In our view this does not demonstrate any great commitment to engage with trade unions although we recognise this may only relate to Commercial and Procurement Services.

It is hard to see how this commitment is deliverable on any contract unless those in Commercial and Procurement Services adopt a more positive view of the benefits of working with trade unions and use their experience to ensure contractors and sub-contractors do as the Council suggest and work in partnership with unions.

Construction Commitment – 3 Health and Safety

It is a recognised fact that the presence of trade union safety representatives significantly improves safety in the workplace. Contractors and their supply chain are expected to work collaboratively with appropriate trade unions to identify and implement the highest standards of safety initiatives.

City of Edinburgh Council CPS do not appear to recognise the fact outlined in the third construction commitment that workplace health and safety is significantly improved where trade union health and safety representatives are present. If this had been the case, then surely they would have consulted them and tapped into this expertise. Unite the Union have members in both Skanska Construction UK Ltd and

Mitie Technical Facilities Management Ltd and experience of dealing with both companies. From what we understand trade union recognition is evident on specific facilities management contracts but there is no trade union recognition covering the companies as a whole.

Has City of Edinburgh Council approached the trade unions to discuss the collaborative work proposed in this commitment in relation to this particular contract? Could there be a role the trade union role in developing a roving safety representatives model allows trade union engagement with supply chain companies and their workers?

Construction Commitment 5 -Trade union recognition

The Council consider it appropriate that all construction contractors and their supply chain will engage with Trade Unions and where recognition arrangements are in place, we would expect our construction contractor partners to respect the right of Trade Unions to appoint shop stewards, workplace health & safety representatives, trade union learning representatives and all trade union accredited representatives to be granted appropriate time and facilities to carry out their duties and responsibilities.

Construction commitment five really emphasises the difficulty trade unions might have engaging with the principal contractors and the large amount of sub-contracting companies planned to be involved delivering this contract. Scottish Hazards would imagine neither of the principal contractors will be keen to promote trade union recognition while many of the SME sub-contractors will not see trade unions as being relevant to their businesses or their workers. Had trade unions been consulted on the procurement and how the construction charter would apply across this contract then perhaps a tailor-made trade union package could have been developed that ensured workers benefited from the trade union premium as well as having access to other benefits such as trade union learning.

The successful bidders were not asked one question on trade union recognition according to our freedom of information response, something we find deeply concerning.

Conclusion

Scottish Hazards believes trade unions have the necessary expertise in health and safety and fair work to participate and inform public procurement and it is disappointing that the City of Edinburgh Council and other public bodies do not seem willing to recognise this.

In our view the trade unions, specifically Unite and Unison are justified to feel aggrieved in the way this procurement has been managed. Scottish Hazards cannot understand the logic of procurement officers trying to argue discussions with trade unions relating to the 2016 also cover the subsequent procurement of facilities management services in 2019.

At the meeting of the Finance and Resources Committee on 20th May the Executive Director of Corporate Services claimed minutes could be made available to prove that meetings had been held during the procurement process commencing in 2019. The Committee did not ask for them to be produced. In City of Edinburgh Council's response to our question on how many meetings were held in relation to this procurement exercise we were told then no meetings took place. We suggest the Committee should be provided with these minutes and shared with the trade unions.

Had trade unions afforded the same opportunity as Zero Waste Scotland and been involved in the design of the specification of health, safety and fair work impacts of this contract then we perhaps they would have had more confidence in the process. At the very least they would have had pre-notification of the Council's intentions and been able, at the outset, to develop proposals for some of these services to be returned in-house.

Commercial and Procurement Services do not appear to have followed the Procurement Journey guidance, had they done so we believe consultation would have followed. City of Edinburgh Council procurement officers seem to have rightly identified trade unions as bona fide stakeholders for the purpose of public procurement but limited that interest only to procurement exercise where there will be an impact on the employment status of City of Edinburgh employees. It may be that they are confusing their legal obligations in this regard under the Transfer of Undertakings (Protection of Employment) Regulations 2006 with their responsibilities to consult with stakeholders under procurements regulations and guidance as well as the Procurement Journey.

Commercial and Procurement Services did not follow the procurement journey on the role and importance of stakeholder engagement throughout the process. They ignored the need to set up a User Intelligence Group opting instead to manage the

process through an internal project board. Had they followed the guidance this situation would not have arisen.

Our organisation is concerned that we are some years away from having an economy in which public procurement can really influence fair work and health and safety if trade unions are not involved in procurement exercises that impact on the working lives of their members.

Fair Work and health and safety in procurement as well as monitoring contractors performance appear to rely on self-regulation and it is hard to see, even from the annual procurement reports of public bodies what progress is being made in these areas.

One of the concerns Scottish Hazards has is the weighting of health and safety and fair work and we have not witnessed one example where a weighting of over 5% is attached to either. We are not sure how we will get to a position where contracting authorities influence procurement outcomes by applying realistic weightings that change economic operators approach to procurement criteria that makes work safer, healthier and fairer.

As a way forward we would suggest that Unison and Unite consult with other trade unions recognised by City of Edinburgh Council with a view to asking the Council agree a protocol covering future trade union engagement in procurement exercises where proposals have any impact on the working lives of their members.

Scottish Hazards
February 2022

Appendix 1

1. Can you provide the date on which this procurement process started?
2. Can you provide the date on which the contracts were awarded?
3. How many meetings took place between City of Edinburgh Council and trade unions regarding this procurement exercise, and with which trade unions?
4. Can you provide the date(s) on which City of Edinburgh Council consulted with trade unions throughout this procurement exercise?
5. The Scottish Government Procurement Journey (Route 3) states, when developing a procurement strategy contracting authorities should identify stakeholders with an interest and concern in something, who were the stakeholders identified in this procurement process?
6. Were any of the Council's trade unions identified as being stakeholders, if not why not?
7. We also understand as part of this procurement process a User Intelligence Group (UIG) should have been created, was such a group created and, if so, who were the members and what expertise did they bring to the process?
8. Were any of the Council's trade unions identified as being key stakeholders and invited to participate in the UIG, if not why not?
9. When developing questions on Fair Work and Health and Safety did City of Edinburgh Council consult with trade unions and use their expertise in these areas?
10. If not what sources of advice did City of Edinburgh Council rely on when framing questions on Health and Safety and Fair Work?
11. Skanska Construction UK was a major user of the The Consulting Association and used this information for blacklisting purposes, did City of Edinburgh Council include the questions suggested in Scottish Procurement Policy Note SPPN 4/2013 regarding blacklisting?
12. What response was provided and what evidence was provided by the company that they are no longer involved in blacklisting activity and the steps they have taken to self-cleansing?
13. Are these companies trade unionised, if so, were copies of recognition agreements or any other form of evidence provided to support this?
14. Can you provide information on both company's commitment to fair work and health and safety such as responses in the standard Pre-Qualification Questionnaire or from their tender documentation?
15. What procedures are being out in place to monitor the performance of both companies throughout this contract, will trade unions be involved in this?

