

35153

Information regarding the procurement process for facilities managements services and the contracts awarded to Skanska Construction UK and MITIE Technical Facilities Management Ltd:

Can you provide the date on which this procurement process started?

The information you have requested is publicly available at the following location:

<https://democracy.edinburgh.gov.uk/mgConvert2PDF.aspx?ID=34056>

If you do not have access to the Internet at home, you may be able to use facilities at your local public library or access a hardcopy version in your local council office.

Under the terms of the Act, a request for information can be refused where one or more of the exemptions listed in the Act apply. In this instance, the Council is claiming an exemption under section 25 of the Act because the information is 'otherwise accessible'.

Can you provide the date on which the contracts were awarded?

The information you have requested is publicly available at the following location:

https://www.publiccontractsscotland.gov.uk/search/show/search_view.aspx?ID=NOV433577

If you do not have access to the Internet at home, you may be able to use facilities at your local public library or access a hardcopy version in your local council office.

Under the terms of the Act, a request for information can be refused where one or more of the exemptions listed in the Act apply. In this instance, the Council is claiming an exemption under section 25 of the Act because the information is 'otherwise accessible'.

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

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. There have been a series of update reports to the Finance and Resources Committee in relation to this procurement exercise as below:

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

5 March 2020 –

<https://democracy.edinburgh.gov.uk/documents/s14799/7.4%20-%20Extension%20to%20Repairs%20and%20Maintenance%20Contracts.pdf>

20 May 2021 –

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

There is also a 'Webcast' recording of the Finances and Resources Committee which took place on 20 May 2021 which provides additional detail

<https://democracy.edinburgh.gov.uk/ieListDocuments.aspx?CId=140&MId=5565&Ver=4>

Can you provide the date(s) on which City of Edinburgh Council consulted with trade unions throughout this procurement exercise?

See response to question 3 above.

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?

The Council's procurement strategy identified the key stakeholders as

- end-user client departments including children and families;
- head teachers;
- business managers from the schools;
- care home managers;
- the Council's Building Programme Team; and
- trade union representatives.

Were any of the Council's trade unions identified as being stakeholders, if not why not?

The trade unions were identified in the procurement strategy as potential stakeholders in the event that any employees were impacted by the scope of the services which were to be tendered. Following preparation of the scope, it was identified that there would be no impact to the terms and conditions of any Council employee.

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?

There was no requirement for a UIG. The procurement process was overseen by a Project Board. Membership of this Board consisted of employees in the following roles:

Head of Property and Facilities Management;
Senior Manager - FM;
Technical Operations Manager;
Senior Service Manager -P&FM;
Principal Accountant, Finance and Procurement;
Commercial Partner, Procurement;
Category Delivery Lead, Procurement;
CAFM Manager;
PPM Manager.

Were any of the Council's trade unions identified as being key stakeholders and invited to participate in the UIG, if not why not?

See responses to question 6 & 7 above.

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?

No.

If not what sources of advice did City of Edinburgh Council rely on when framing questions on Health and Safety and Fair Work?

In relation to Health and Safety, the Council utilised support from internal policies, procedures and appropriate references to ISO accreditation and CDM regulations.

In relation to Fair Work Practices, the Council utilised advice and statutory guidance from the Scottish Government in determining the content of the question.

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?

Yes, the procurement utilised the Scottish Government's Single Procurement Document.

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?

The relevant answer by Skanska was as follows:

"Neither the Applicant nor any organisation within the Applicant's group has ever been found guilty of blacklisting. For completeness, Skanska did, in the past, carry out reference checks with an organisation called the Consulting Association ("CA"). The CA's activities pre-date the coming into force of the Employment Relations Act of 1999 (Blacklists) Regulations 2010. The CA also ceased trading before the Regulations came into force. In any event, any activity related to the CA is firmly in the past. The Information Commissioner investigated Skanska's involvement with the CA and decided no further action was needed. Skanska has apologised for its use of the CA and has put in place full measures to ensure that best practice is followed in its recruitment activities. Skanska is also one of eight companies that have formed a compensation scheme to provide redress to anyone who suffered harm as a result of the CA. We can confirm that Skanska is not engaged in any activity that could constitute blacklisting."

Are these companies trade unionised, if so were copies of recognition agreements or any other form of evidence provided to support this?

The Council did not ask if the companies were unionised.

Can you provide information on both companies commitment to fair work and health and safety such as responses in the standard Pre-Qualification Questionnaire or from their tender documentation?

Under the terms of the legislation, a request for information can be refused where one or more exemptions listed in the legislation apply. In this instance, the Council is claiming the following exemption to the information that you have requested: Section 33(1)(b) exempts information if its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).

Commercially sensitive information regarding a live contract such as the information and responses provided in their tender documentation cannot be provided. The Council considers that if this information was disclosed to you it would harm the provider's commercial interests by providing external providers with an unfair advantage when competing for Council contracts and work, as the responses were evaluated and could be plagiarised.

I am also required to consider the application of the public interest test in section 2(1)(b). In doing so the Council appreciates the public interest in ensuring that it receives value for money and is transparent and accountable in how it spends public funds. However, if the Council were to release this information into the public domain, it would cause substantial harm to the commercial interests of the provider, as it could provide external providers with an unfair advantage when competing for Council contracts and work. The Council therefore finds that the public interest in providing this information is outweighed by the Council's need to maintain confidentiality on costs in line with the need to provide best value for money and ensuring fair, open and transparent competition. Disclosure of commercially sensitive information would cause substantial harm to both the Council seeking to obtain the best value for the citizens of Edinburgh and the provider.

Please note that this letter constitutes a formal refusal notice under section 16 of the Freedom of Information (Scotland) Act 2002.

What procedures are being put in place to monitor the performance of both companies throughout this contract, will trade unions be involved in this?

The Hard FM Services contracts are based on NEC4 Term Service Contract which promotes proactive project and risk management. Contractor performance is linked to a specific monitoring Key Performance Indicators.

There are no current plans to involve the Trade Unions within the Council's contract management procedures.