

# Finance and Resources Committee

10.00am, Thursday, 16 August 2018

## Construction Charter Commitments

Item number	7.15
Report number	
Executive/routine	
Wards	
Council Commitments	

### Executive Summary

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The report considers the benefits and issues arising from a proposed Construction Charter and asks the Finance and Resources Committee to approve the Construction Charter Commitments.

## Construction Charter Commitments

### 1. Recommendations

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- 1.1 It is recommended that the Finance and Resources Committee adopt the Construction Charter Commitments.

### 2. Background

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- 2.1 At the City of Edinburgh Council meeting on 15 March 2018, the Deputy Leader of the Council proposed the following motion, which was approved: -

*“Council:*

*Acknowledges the importance of the construction charter to ensure health and safety and best value for the city.*

*Instructs officers to work with the trade unions and report back within two cycles on the adoption of a construction charter.*

*The report should include robust monitoring/checking and reporting processes to ensure all contractors and sub-contractors abide by the charter on sites delivering council projects.”*

- 2.2 Council officers have liaised with trade union representatives and now propose the attached Construction Charter Commitments (the Charter).

### 3. Main report

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- 3.1 The Charter is intended to improve standards in the construction industry, including: health and safety, fair wages, protection at work and promoting excellent employment relationships.
- 3.2 Trade unions have raised concerns about non-union members regarding conditions for workers on sites, inappropriate use of umbrella companies and potential blacklisting.
- 3.3 The unions believe that the Charter will improve contractor behaviour within the construction industry.

## **Legislation**

- 3.4 The Council is obliged to consider fair working practices and to take them into account where appropriate.
- 3.5 Procurement legislation imposes an obligation on the Council to comply with the sustainable procurement duty, to improve the economic, social, and environmental wellbeing of the authority's area. The Council must also carry out procurement to act with a view to securing those improvements. These principles are therefore embedded in Council tender processes.
- 3.6 The Scottish Government has produced guidance which describes what is required of public sector bodies when undertaking procurements in respect of fair working practices. Legislation obliges the Council to take the guidance into account when assessing the suitability of any contractor.
- 3.7 Legislation also requires that the Council must consider whether to impose community benefit requirements as part of the procurement where the contract value is great than £4m. Community Benefits are intended to improve the economic, social or environmental wellbeing of the Authority's area and include supporting apprenticeships, training and work experience opportunities.
- 3.8 There are extensive health and safety and employment regulations that Contractors must comply with. Compliance is mandatory and ensures a consistent baseline for all Contractors in respect of these issues. Council tender documentation contains a mandatory requirement that tenderers hold an appropriate health and safety accreditation from a third party or satisfy the Council that relevant arrangements are in place.
- 3.9 Blacklisting is prohibited by the Employment Relations Act 1999 (Blacklists) Regulations 2010. Council tender documentation and terms and conditions underline that blacklisting is an unacceptable and prohibited practice and any contractors found to be in breach of the obligations will be unable to work with the Council.

## **Current Council Practice**

- 3.10 The link to the Commercial and Procurement Strategy (December 2016 to March 2020) ("the Strategy") is provided under background reading. The Strategy sets out the objectives which include making sustainable procurement business as usual.
- 3.11 Where the Council are procuring a construction project, they require tenderers to fill out the submission document. The submission document will commonly ask tenderers to make submissions in relation to their health and safety standards; compliance with the CDM Regulations 2015; sustainable use of materials and proposed community benefits. The submission will also request information on fair work practices and commonly list the following issues to address: training and development, holiday provision; family friendly policies; zero hours contracts; engagement and empowerment of staff and pay and pensions. The contents of the submission are scored and the scores are weighted depending on the stated quality weighting percentage allocated to that question. Therefore, the tenderers responses

relating to these issues will inform the decision as to which is the most suitable Contractor. The responses are thereafter embedded in the contract between the Council and the successful tenderer. The standard terms and conditions require that these obligations are adhered to by all contractors in the supply chain.

- 3.12 Current council tender documentation requires that a tenderer should hold a BS EN ISO 9001 (or equivalent) accreditation, or satisfy the council that relevant arrangements are in place. This accreditation relates to quality management and ensures that the workforce is sufficiently skilled and that satisfactory training arrangements are in place.

#### **Amendment of the Proposed Construction Charter**

- 3.13 Council officers have proposed amendments to the Charter to enable the Council to sign it.
- 3.14 Council officers believe that an effective measure to tackle the issues identified would be to ensure effective lines of communication between the Council and key stakeholders, including the unions, contractors and sub-contractors. If there are any breaches of the Charter principles then these can be reported timeously to the Council. The Council can react effectively and ensure compliance with contractual obligations and impose any necessary punitive measures.
- 3.15 Union representatives agree that the adoption of the Charter would be a positive development to support their aims. They also suggested that ongoing communication between the unions and the Council could help to feed into the Council's contract management of construction projects. The unions' site knowledge and real-time involvement could help the Council to focus attention on problematic issues on specific sites.

## **4. Measures of Success**

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- 4.1 The success of the Charter will be measured by its adoption and promotion.
- 4.2 The Council has confirmed it supports the Charter and its intended aims. Signing the Charter would be a clear signal to the market that the Council take the requirements within the Charter seriously and contractors are expected to accord to them.

## **5. Financial Impact**

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- 5.1 There is no direct financial impact associated with this report.
- 5.2 Indirect financial impact is envisaged in respect of improved reporting procedures and follow up action, which will include increased staff time to ensure effective communication between the stakeholders and the Council. Contract managers will be responsible for oversight and effective monitoring.

- 5.3 In relation to the indirect costs mentioned above, there would be a cost associated with improved reporting procedures and follow up enforcement action, including an increased in officer time required to ensure effective communication between the stakeholders and the Council.
- 5.4 Where issues do arise, there will be a cost associated with managing the issues. Council officers will be required to gain a full understanding of the issues, the proposed resolution and monitoring improvements. Where improvements are not introduced and issues persist, enforcement action will be required. Persistent or serious failings may result in the termination of the contract and procuring alternative contractors. This could result in significant and costly delays to Council construction projects.

## **6. Risk, policy, compliance and governance impact**

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- 6.1 There are no risk, policy, compliance or governance aspects arising from this report.

## **7. Equalities impact**

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- 7.1 Council adoption of the Charter would be in line with the Council's equality obligations. The report itself has a positive equalities impact.

## **8. Sustainability impact**

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- 8.1 Council adoption of the Charter in its amended form would be in line with the Council's sustainability obligations. Much of the Charter's content reflects sustainability obligations contained within procurement legislation.

## **9. Consultation and engagement**

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- 9.1 Consultation continues to take place between Council officers and trade union representatives.

## 10. Background reading/external references

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- 10.1 [The Council's Commercial and Procurement Strategy, December 2016 to March 2020](#)
- 10.2 [Statutory guidance on the selection of tenderers and award of contracts which addresses fair work practices, including the living wage, in procurement](#)

**Stephen S. Moir**

**Executive Director of Resources**

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## 11. Appendices

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- 11.1 Construction Charter Commitments

# **Construction Charter Commitments**

## **The City of Edinburgh Council**

### **August 2018**

# Construction Charter Commitments

## Our commitment

Our Construction Charter Commitments set out what we as a Council expect for those contractors who undertake construction work on our behalf and where we would like others to follow.

The Council has a clear vision for construction contractors in Edinburgh and we want to make sure that fair work practices are adopted and complied with.

We, as a Council, promote high standards of performance, accountability, and a culture based on strong values. We ask others to do the same. We expect all construction contractors to achieve the highest standards in respect of employment status, health and safety, standards of work and apprenticeship training.

The objective of the Construction Charter Commitments is to promote a responsible and safe working with our construction contractors while encouraging all construction organisations to work in partnership with trade union colleagues.

The Leader, Depute Leader, Councillors, Senior Management and all Staff commit to the provision of effective and sound governance at all levels and we call upon those engaging our construction contractor partners in Edinburgh to follow these Construction Charter Commitments.

**Andrew Kerr, Chief Executive**  
**August 2018**



# **Construction Commitment 1**

## **High working standards**

The Council are responsible for the procurement of a wide range of construction projects.

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.

# **Construction Commitment 2**

## **HMRC compliance**

All parties recognise that the highest level of compliance with current HMRC regulations must be achieved where public funds are utilised.

The Council recognises that all construction workers should be employed under an appropriate contract of employment (subject to PAYE and Class 1 National Insurance Contributions) and, where appropriate, any applicable Industry Collective Agreement. This excludes genuinely self-employed contractors and Agency Workers. The Council recognises that Agency Workers would ordinarily be provided with the appropriate contract directly from their employing agency. The Council is opposed to any unlawful employment practices.

# **Construction Commitment 3**

## **Health and safety**

Health and safety of workers on all of our construction projects is paramount.

The Council requires all contractors rigorously implement and adhere to the highest standards for health and safety performance. Furthermore, it is a requirement that all contractors rigorously implement and adhere to our minimum health & safety standards.

This includes safe systems of work to protect the public and construction workers alike, to incentivise continuous safety improvement and ensure that behaviours are managed to drive a safety performance culture.

We require all construction contractors to provide quality welfare facilities, fit for purpose and in accordance with the Construction (Design and Management) Regulations 2015, as updated from time to time.

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 to work collaboratively with appropriate trade unions to identify and implement the highest standards of safety initiatives.

# **Construction Commitment 4**

## **Excellence in skills and training**

The Council expects that all construction projects are completed to the highest standards possible, to meet the aspirations of the residents of Edinburgh.

We expect that all construction workers are highly competent and have the appropriate levels of skill and training to carry out the work they are employed to do.

To assist in the achievement of this Commitment the Council's contractors and their supply chains must ensure they retain documented evidence that all construction workers are competent to carry out the work they have been employed to do.

The Council require all construction contractors to retain documented evidence which allows for clear and transparent auditing to take place during the term of the contract by the Council or its nominee.

The Council recognises that specific construction industry skills and grade card(s) such as JIB or CSCS, or equivalent will be considered to be acceptable evidence.

The Council is mindful of the construction industry skills shortage and the need to address this through apprenticeships and adult training to 'up-skill'. The Council construction contractors and supply chain working with the council are asked to develop and implement local programmes to address skills shortages and provide appropriate training opportunities.

# **Construction Commitment 5**

## **Trade union recognition**

The Council are mindful of wider legislation which requires organisations to recognise trade unions.

The Council would positively encourage all of our construction contractor partners to recognise the right of all construction workers to be employed under and to be protected by the appropriate national industry collective agreement(s).

The Council expects our construction contractor partners to fully comply with all applicable national construction industry standards such as SJIB or CSCS.

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.

The Council recognises the benefit trade unions bring to the construction workplace and the rights of workers to hear from trade union representatives.

# **Construction Commitment 6**

## **Recruitment**

The Council, its contractors and their supply chain are committed to a fair and transparent recruitment policies.

The Council expect all contractors and their supply chain to actively ensure that the engagement of their workforce meets the needs of the construction project and the specific tasks for which they are recruited to undertake.

# **Construction Commitment 7**

## **No blacklisting**

The Council, its construction contractors and their supply chain agree that it is not acceptable for anyone to use or make reference to any form of blacklist.

Blacklisting is prohibited by the Employment Relations Act 1999 (Blacklists) Regulations 2010. It is a practice that is often discriminatory in nature and infringes on workers' rights to privacy and data protection.

Council tender documentation and terms and conditions underline that blacklisting is an unacceptable and prohibited practice and any contractors found to be in breach of the obligations will be unable to work with the Council.

# **Construction Commitment 8**

## **Government buying standards**

All relevant construction contracts require to comply with the Government Buying Standards, including, but not limited to, BES 6001



Council Leader, Councillor Adam McVey .....

Council Depute Leader, Councillor Cammy Day .....

Chief Executive, Andrew Kerr .....

Executive Director of Resources, Stephen S. Moir .....