

Hampshire Fire and Rescue Authority

Finance and General Purposes Committee

Item: 12

29 October 2013

Construction industry blacklisting

Report by the Chief Officer

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1 Summary

- 1.1 This report responds to a question from the Committee's previous meeting about whether there is an ethical procurement policy relating to construction services, and whether such a policy includes restriction on firms that practice blacklisting.

2 Recommendation

- 2.1 That the Committee notes the content of this report and the proposed actions to address construction industry blacklisting.

3 Introduction

- 3.1 On 24 July 2013 the Finance and General Purposes Committee agreed to the use of the Authority's seal to complete a Deed of Accession to a Construction Services Framework, procured jointly by Hampshire and Surrey County Councils. In agreeing this a question was raised about the Authority's approach to ethical procurement and specifically blacklisting and it was agreed that a report on this topic should be presented to this meeting.
- 3.2 In addition a motion on construction blacklisting was submitted to the Hampshire Fire and Rescue Authority (HFRA) meeting on 26 September 2013. The motion, agreed after amendment, read:

"A number of construction companies have been challenged about supporting the existence of and subscribing to construction industry 'blacklists', which detail covertly gathered information on construction trade unionism, militant tendencies, poor timekeeping, trouble making, etc. Blacklisting is an unacceptable practice and cannot be condoned.

This Fire Authority resolves to support the campaign against blacklisting, and will seek written assurances from its partners and suppliers that they do not use blacklisting."

4 Procurement Framework

- 4.1 HFRA procurement is undertaken by the Joint Working In Hampshire procurement team. The policies are in the process of being aligned with those of Hampshire County Council and Hampshire Constabulary.
- 4.2 It is a requirement of the Public Contracts Regulations 2006 and HFRA contract standing orders that all procurement processes involve an assessment of equalities and diversity. This assessment includes compliance with anti discrimination legislation but does not specifically include construction industry blacklisting.
- 4.3 The HFRA procurement framework contains the following requirements in relation to equality and diversity for suppliers:

Hampshire Fire and Rescue Service is committed to building an organisation that makes full sense of the talents, skills, experience and different perspectives available in a diverse society, and where people feel they are respected and valued, and can achieve potential regardless of the following: -

- *Gender (including sex, marriage, gender re-assignment)*
- *Race (including ethnic origin, colour, nationality, and national origin)*
- *Disability.*
- *Sexual orientation (including civil partnership)*
- *Religion or similar philosophical belief.*
- *Age*
- *Social or economic background*
- *Trade union membership.*

The aims of this policy are to ensure that:

- *No-one receives less favourable treatment on any of the above grounds.*
- *The organisation is free of unwanted conduct that violates the dignity of workers or creates an intimidating, hostile, degrading, offensive or humiliating environment.*
- *Opportunities for employment, promotion, transfer, development and training, and access to conditions of service, benefits, facilities and services, will be fair and equitable, and based solely on merit.*

5 Blacklisting

- 5.1 In 2009 the Information Commissioner's Office seized a database of over 3000 construction workers and environmental activists that was being used by 44 construction companies. The database was operated on behalf of the companies by an organisation called The Consulting Association. Following the ICO's investigation, enforcement notices were issued on the companies involved, and a fine of £5000 levied on the individual who ran the database.
- 5.2 Denial of a job for discriminatory reasons such as trade union membership was made unlawful, and blacklisting was statutorily prohibited under the Employment Relations Act 1999 (Blacklists) Regulations 2010.

- 5.3 The GMB (trade union) has recently commenced proceedings in the High Court claiming compensation for 70 of its members allegedly blacklisted by Carillion and other construction employers.
- 5.4 The Public Contracts Regulations 2006 contain a discretionary disqualification criterion that allows public authorities to exclude a potential supplier from a procurement process if it has committed an act of "grave professional misconduct in the course of its business or profession". This could apply to alleged involvement in blacklisting.
- 5.5 Action to exclude any bidder on such a ground can only be taken at the bidding stage, not after a contract has been entered into unless such conduct amounted to a material breach of contract.
- 5.6 Any types of misconduct which HFRS considers to be "grave" need to be clearly set out in the tender documentation to ensure transparency and equal treatment. Any decision to exclude a bidder on discretionary grounds would have to be objectively justifiable and the same criteria applied to each bidder.
- 5.7 The onus of proof of such a matter would be on HFRA and such action could be the subject of a legal challenge. HFRA would need to assess the seriousness of the alleged offences, give the tenderer the opportunity to demonstrate any action it has taken to rectify any breach or to address the issue and be able to demonstrate that any decision to exclude is proportionate to the seriousness of the offence.
- 5.8 Given the number of construction companies which appear to have been involved in blacklisting, a judgment would also need to be made regarding the extent to which value for money can be obtained in a situation where a number of exclusions could mean that genuine competition cannot be secured.

6 Proposed actions

- 6.1 The Joint Working in Hampshire procurement team will be writing to all suppliers, service providers and contractors advising that in all future procurements HCC, HC and HFRA will be requiring them to have a clear position that they do not blacklist.

7 Supporting our corporate aims and objectives

- 7.1 HFRA procurement policy includes an aim that supplier organisations are free of unwanted conduct that violates the dignity of workers or creates an intimidating, hostile, degrading, offensive or humiliating environment.

8 Risk analysis

- 8.1 There are no significant risks arising from the proposals and actions in this report.

9 People Impact Assessment

- 9.1 The proposals in this report are considered compatible with the provisions of the equality and human rights legislation.

10 Resource implications

10.1 Writing to HFRS suppliers will require an administrative resource.

11 Background papers

11.1 The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of the report:

None

Note: The list excludes: (1) published works; and (2) documents that disclose exempt or confidential information defined in the Act.