



Glasgow City Council

City Administration Committee

Report by Director of Legal and Administration

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Item 4

5th December 2024

HUMAN RIGHTS DUE DILIGENCE IN PROCUREMENT

Purpose of Report:

To advise Committee of:

- (i) the result of the initial assessment of currently procured council contracts with reference to businesses operating in the Occupied Palestinian Territories; and
- (ii) actions that may be taken as part of the human rights due diligence process in the procurement of public contracts to be awarded by the council.

Recommendations:

Committee is asked to note the contents of the report and to:-

- (i) Approve the adaptation of a Professional Integrity Certificate to include assurances that bidders for council procured contracts: (a) do not exploit assets in the Occupied Palestinian Territories or any other illegal settlement in the world; (b) comply with all international humanitarian obligations in accordance with international law, and (c) give similar assurances regarding their supply chain;
- (ii) Approve the issue of the Professional Integrity Certificate to all existing suppliers with whom the council has a procured contract; and
- (iii) Agree the council's Corporate Procurement Unit and HSCP's Commissioning Team:

- a. continue to follow the Scottish Government's Scottish Procurement Policy Note (SPPN) 4/2014 guidance referred to in Section 3 of this report; and
- b. maintain dialogue with the Scottish Government regarding the organisations listed on the UN database of business enterprises operating in the Occupied Palestinian Territories and monitor any changes to the list.

Ward No(s):

Citywide: ✓

Local member(s) advised: Yes No consulted: Yes No

1 Introduction

- 1.1 At its meeting on 28 March 2024, council passed a motion committing itself to:

“widening the present human rights due diligence process when making awards decisions by bringing a report to the City Administration Committee detailing actions that the council can lawfully take to assure itself of supply chains that do not conflict with international humanitarian law and seek legal expertise where necessary to advise this.”

- 1.2 In addition, the motion requested that:

“in the procurement process, organisations making bids to Glasgow City Council are able to provide evidence of best practice in relation to their operations to ensure they are operating in a manner that protects the human rights of those directly and indirectly involved or affected by the organisations operations.”

and

“this report considers an assessment of current Council procurement contracts which include goods or services which have been wholly or partly manufactured, assembled or operated by companies operating in the occupied territories, as per the updated United Nations database of business enterprises in relation to the Occupied Palestinian Territories. This initial assessment would seek to provide a base understanding of the Council supply chain, acknowledging that the aforementioned database is continuously changing.”

- 1.3 Since the passing of the motion, officers within Legal Services and the Corporate Procurement Unit have carried out work to determine what measures can lawfully be taken in order to respond to the terms of the motion in relation to the council’s procurement practices.
- 1.4 Members should be aware that this report was considered by the Wellbeing, Equalities, Communities, Culture and Engagement City Policy Committee on 14 November 2024. Papers can be accessed [here](#).

2 Assessment of Current Contracts

- 2.1 In undertaking the initial assessment of currently procured council contracts as requested in the motion, the CPU and HSCP Commissioning Team have checked their contracts against the 97 organisations shown in the [Office of the United Nations High Commissioner for Human Rights’ database of business enterprises in relation to the Occupied Palestinian Territories](#).
- 2.2 This assessment found that the council does not have a currently procured contract with any of the organisations on the database. It is intended,

however, to maintain dialogue with the Scottish Government regarding the organisations listed on the UN database and to monitor any changes to the list.

3 Lawful Courses of Action

3.1 Having regard to the terms of the motion, this section sets out the relevant legislation and statutory guidance applicable to the council when making procurement decisions relating to the potential exclusion of bidders or termination of contracts. In the case of the provision set out at section 3.6 below, however, further regulations are necessary in order for it to come into effect.

- *Regulation 58 (8) (c) of The Public Contracts (Scotland) Regulations 2015 and Scottish Procurement Policy Note 4/2014*

3.2 This regulation gives the council a discretion to exclude any bidder where it can demonstrate “*by appropriate means*” that the bidder is “*guilty of grave professional misconduct, which renders its integrity questionable.*”

3.3 The Scottish Government’s Scottish Procurement Policy Note (SPPN) 4/2014, states that “*exploitation of assets in illegal settlements is likely to be regarded as constituting ‘grave professional misconduct’ for the purposes of procurement law.*”

3.4 The recommended SPPN 4/2014 approach is to carry out an investigation where concerns are raised regarding any individual procurement exercise and seek legal advice, as required. This should help determine on a case by case basis whether involvement by a business in illegal settlements, such as the occupied territories to which the motion refers, would meet the definition of grave professional misconduct. A blanket ban of a particular organisation or general boycott of its goods and services, however, would not be permissible.

3.5 Where the council considers it is entitled to exclude a bidder, such exclusion must comply with the principles of procurement law (such as equal treatment and transparency) and must be “*proportionate in relation to the nature and scale of the offence*” (SPPN 4/2014).

- *The Procurement Reform (Scotland) Act 2014*

3.6 Under section 28 of this Act, the Scottish Ministers have power to make regulations prescribing the circumstances in which a bidder may or may not be excluded on the basis of pre-set criteria. The legislation states the criteria may include that the economic operator has committed an act of misconduct of a kind specified in the regulations.

3.7 Although no regulations have been introduced to date, if such regulations were made then they would constitute another course of lawful action that

could be followed albeit only in relation to lower value regulated procurements.

- *Section 17 of the Local Government Act 1988*

- 3.8 This section prevents councils from taking 'non-commercial matters' into consideration in procurement decisions. The list of 'non-commercial matters' which local authorities are excluded from taking into account includes '*the country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of contractors*' (see section 17(5)(e) of the Act).
- 3.9 This is subject to a provision that councils may refer to a 'non-commercial matter' to the extent that they consider it necessary or expedient to do so to comply with the public sector equality duty under section 149 of the Equality Act 2010. This includes a duty to have regard to the need to eliminate discrimination, harassment, victimisation, and any other conduct prohibited under the Act.
- 3.10 In setting award criteria or contractual performance conditions, for example, the council must have due regard to whether such criteria or conditions should include considerations that enable it to better perform the equality duty.

4 Evidence of Best Practice in relation to Human Rights

- 4.1 To enable the council to obtain evidence of best practice in this area, it is entitled to ask questions and request information from potential bidders about their conduct regarding human rights. The Scottish Government's [Guidance on due diligence: human rights](#) document also refers, for example, to the need for prior checks which should be carried out as part of an effective due diligence process.
- 4.2 On that basis, the Corporate Procurement Unit (CPU) and the HSCP's Commissioning Team have been developing a Professional Integrity Certificate (PIC) which bidders applying for the award of a council contract will be required to complete. It is proposed that the PIC will be adapted to include requirements that bidders provide assurances that they:
- (a) do not exploit assets in the Occupied Palestinian Territories or any other illegal settlement in the world;
 - (b) comply with all humanitarian obligations in accordance with international law; and
 - (c) give similar assurances regarding their supply chain.
- 4.3 The PIC also states that each bidder is responsible for the accuracy of the information submitted in respect of its bid and that knowingly providing false information may result in the bid being excluded.

- 4.4 It is also proposed to issue the Professional Integrity Certificate to all existing suppliers with whom the council has a procured contract.
- 4.5 Regulation 58 (8) (h), (i) and (j) of the 2015 regulations provide discretionary grounds for exclusion where there is either serious misrepresentation in supplying the information required, or withholding of such information, or negligent provision of misleading information.
- 4.6 If any bidder or contracted supplier fails to provide accurate confirmation, or knowingly provides false information, or is found to have committed an act which is considered to constitute grave professional misconduct then the council could decide whether their tender is deemed non-compliant and if any contract award ought to be terminated.

5 Policy and Resource Implications

Resource Implications:

<i>Financial:</i>	None.
<i>Legal:</i>	Specialist external legal advice may be required in relation to the consideration of whether a tender is to be deemed as non-compliant or if any contract award is to be terminated as a result of the human rights due diligence process.
<i>Personnel:</i>	There are no personnel implications for the Council from this report.
<i>Procurement:</i>	If approved, the issuing of the Professional Integrity Certificate will form part of the procurement process for the award of Council contracts.

Council Strategic Plan: Not Applicable.

Equality and Socio-Economic Impacts:

<i>Does the proposal support the Council's Equality Outcomes 2021-25? Please specify.</i>	The EQIA screening process will continue to be carried out as part of the individual evaluation and award of council contracts.
<i>What are the potential equality</i>	

impacts as a result of this report?

Please highlight if the policy/proposal will help address socio-economic disadvantage.

Climate Impacts:

Does the proposal support any Climate Plan actions? Please specify: Not applicable.

What are the potential climate impacts as a result of this proposal?

Will the proposal contribute to Glasgow's net zero carbon target?

Privacy and Data Protection Impacts: None.

6 Recommendations

Committee is asked to note the contents of the report and to:-

- 6.1 Approve the adaptation of a Professional Integrity Certificate to include assurances that bidders for council procured contracts: (a) do not exploit assets in the Occupied Palestinian Territories or any other illegal settlement in the world; (b) comply with all international humanitarian obligations in accordance with international law, and (c) give similar assurances regarding their supply chain;
- 6.2 Approve the issue of the Professional Integrity Certificate to all existing suppliers with whom the council has a procured contract; and
- 6.3 Agree the council's Corporate Procurement Unit and HSCP's Commissioning Team:

- (a) continue to follow the Scottish Government's Scottish Procurement Policy Note (SPPN) 4/2014 guidance referred to in Section 3 of this report; and
- (b) maintain dialogue with the Scottish Government regarding the organisations listed on the UN database of business enterprises operating in the Occupied Palestinian Territories and monitor any changes to the list.