

**BRISTOL CITY COUNCIL**  
**OVERVIEW AND SCRUTINY MANAGEMENT BOARD**  
**22<sup>nd</sup> OCTOBER 2013**

**Update note on implementing motion to full Council on blacklisting**

At its meeting on 10<sup>th</sup> September 2013, full Council resolved the following;

*City Council is deeply concerned by revelations that major companies have been involved in “blacklisting” in order to deny employment to workers who have engaged in trade union activity, such as reporting breaches of health and safety regulations.*

*The Information Commissioners Office (ICO) found that a blacklist of over 3,200 construction workers was maintained, and their personal details traded for profit. This blacklist was used by over 40 companies and included information about workers’ personal relationships, trade union activity and employment history.*

*Many of the workers who were blacklisted for reporting breaches of health and safety work in the construction industry which employs 5% of all workers in Britain but produces 22% of fatal injuries.*

*The ICO list of companies which used the blacklist service includes companies contracted by Bristol City Council. The use of such blacklists is unacceptable and cannot be condoned, having a potentially negative impact on the employment rights of Bristol’s 8,000+ construction workers.*

*Several local authorities across the country have passed resolutions to refuse to accept tenders for publicly funded contracts from companies that use blacklisting. It is time that Bristol joined them.*

*This Council resolves, wherever lawful to do so to;*

- *exclude companies involved in blacklisting of workers from securing future Council contracts.*
- *require companies tendering for contracts to demonstrate that they are not using blacklists.*
- *require that companies that tender for Council contracts demonstrate that they have processes in place to encourage the reporting by workers of workplace concerns, particularly in respect of health, safety and welfare.*
- *seek, where this can be done without financial or legal penalty, to terminate contracts where companies are found to be using blacklists.*
- *examine existing contracts with any of the companies listed by the ICO and ask for reassurances that the company uses no form of blacklisting to inform their employment decisions.*

*The council also declares its support for campaigns by trade unions and others against the continued use of blacklisting and the sacking of trade unionists who raise legitimate employment issues and to requests for apologies and compensation to those who have been unable to work due to blacklisting.*

### **Proposed action**

In response to the motion passed by full Council and subsequent briefing of the Mayor, the following actions are proposed in order to achieve a solution that is both lawful and practical.

### **Letter to existing contractors**

All organisations currently identified through the e-tendering system as having been awarded a contract in excess of £15K will be sent a letter to be informed of the Council's concerns regarding blacklisting and asked to confirm that blacklists are not used in the recruitment or treatment of workers.

### **Future Procurements**

It is proposed that the following approach is taken in relation to **future** procurements:

<b>Type of contract/procurement</b>	<b>Approach</b>
<ul style="list-style-type: none"> <li>• Goods and services contracts below the EU financial threshold (£173,934)</li> <li>• Works contracts below £250,000</li> </ul>	<ul style="list-style-type: none"> <li>• Bidders will be asked to confirm that blacklists are not used. Any bidder that does not provide this confirmation can be excluded. When the procurement involves the use of a standing list (e.g. Exor), this approach would be subject to the terms of that standing list – this issue needs to be investigated further.</li> <li>• Include a clause in the contract (including purchase order terms) to classify the use of a blacklist as a fundamental breach that will give the Council the right to terminate the contract.</li> </ul>
<ul style="list-style-type: none"> <li>• Goods and services above the EU financial threshold (£173,934)</li> <li>• Works contracts above £250,000</li> </ul>	<ul style="list-style-type: none"> <li>• Bidders will be asked to confirm and demonstrate that blacklists are not used. Any bidder that cannot provide this confirmation and/or demonstrate it to the Council's satisfaction can be excluded. The type of information that could demonstrate this could include details of: (i) any staffing/HR measures that have been put in place; (ii) structural and organisational measures; (iii) instructions issued by senior management. The approach that the Council takes in deciding whether or not this has been demonstrated to its satisfaction must comply with the procurement principles of transparency and proportionality.</li> <li>• Bidders will be asked to provide details of any finding by a court/tribunal/similar public body</li> </ul>

	<p>against the bidder regarding the use of a blacklist. Where there is any such finding, the bidder will be excluded unless it can demonstrate, to the Council's satisfaction, that adequate "self-cleaning" has been carried out (i.e. measures adopted to put right the wrongdoing and to prevent it from re-occurring – please see below for more details). The approach that the Council takes in deciding whether the self-cleaning is adequate must comply with the procurement principles of transparency and proportionality.</p> <ul style="list-style-type: none"> <li>• Include a clause in the contract to classify the use of a blacklist as a fundamental breach that will give the Council the right to terminate the contract.</li> </ul>
<p>Contracts awarded under a pre-established framework agreement (including those established by the Council and by third parties)</p>	<ul style="list-style-type: none"> <li>• A clause to be included in the contract to classify the use of a blacklist as a fundamental breach that will give the Council the right to terminate the contract.</li> </ul>

### **Self-Cleaning following a past wrong doing**

It is proposed that the following activities would be expected for a bidder to demonstrate self-cleaning following a past wrong doing:

1. Clarification of the relevant facts and circumstances to determine: what were the facts and circumstances of the wrongdoing? When did the wrongdoing take place? Was there any subsequent wrongdoing?

2. Effective repair of the damage caused: What has the bidder done to repair the damage caused by the wrongdoing?
3. HR measures: Have any staffing/HR measures been put in place to prevent a recurrence?
4. Structural and organisational measures: What structural and organisational measures have been put in place to prevent a recurrence?

**Russell Ward, Head of Partnership- Procurement**

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