



Internal Audit Report

Compliance with Procurement Related Legislation and Internal Regulations

Issued to:

Richard Ellis, Interim Depute Chief Executive (Director of Corporate Governance)
Craig Innes, Head of Procurement
Fraser Bell, Head of Legal and Democratic Services
Steven Whyte, Head of Finance
External Audit

EXECUTIVE SUMMARY

The objective of this audit was to undertake a high level review the Council's spend with a sample of suppliers to obtain assurance that the Council is complying with Legislation and the Council's internal governance arrangements and could, therefore, demonstrate that Value for Money has been achieved.

Whilst there was evidence supporting appropriate procurement arrangements for most of the sampled spend, testing did identify areas where the Council has not complied with the requirements of EU Procurement Regulations or its own internal governance arrangements. In such cases, the Council may have difficulty demonstrating best value and could be exposed to potential challenge from businesses that have been denied the opportunity to bid for the supply of goods / services.

In view of the above, it is not possible to give assurance that procurement and internal Council regulations are being complied with in all instances. However, recent changes in governance arrangements and planned future changes should assist in ensuring a higher level of compliance which will provide greater assurance in the future.

1. INTRODUCTION

- 1.1 The Council's governance arrangements for procurement were contained within the Council's Standing Orders relating to Contracts and Procurement and are now within the ACC Procurement Regulations, which were approved by the Finance, Policy and Resources Committee on 7 June 2016 and replaced the old Standing Orders. Further rules are contained in the Council's Financial Regulations, and Schemes of Delegation. Other governance arrangements are subject to on-going review as part of the Council's Governance Review. Internal Audit commented on, and made recommendations regarding, the arrangements currently in place in Internal Audit report AC1623 (reported to the Audit, Risk and Scrutiny Committee in June 2016).
- 1.2 Both the old Standing Orders relating to Contracts and Procurement and the new ACC Procurement Regulations require that tendering exercises must be carried out depending on the level of expenditure on a contract. Expenditure should be aggregated across the whole Council when determining if the threshold is met or can be aggregated towards a particular project.
- 1.3 The objective of this audit was to undertake a high level review the Council's spend with a sample of suppliers to obtain assurance that the Council is complying with Legislation and the Council's internal rules and could, therefore, demonstrate that Value for Money has been achieved.
- 1.4 To do this, payments made to the Council's 50 largest suppliers by payment value in the previous four financial years, and a further sample of 50 suppliers, were selected and assurance was sought that appropriate contracts were in place where appropriate. In some cases contracts were not appropriate because of the type of payments that had been made (eg Business Rates refunds, grants, etc).
- 1.5 The factual accuracy of this report and action to be taken with regard to the recommendations made have been agreed with Richard Ellis, Interim Depute Chief Executive (Director of Corporate Governance), Craig Innes, Head of Commercial & Procurement Services (C&PS), Fraser Bell, Head of Legal and Democratic Services and Steven Whyte, Head of Finance.

2. FINDINGS AND RECOMMENDATIONS

2.1 Contracts Register

- 2.1.1 The Procurement Reform Act (Scotland) 2014, required that local authorities publish their contract register, with information made available, online, by 18 April 2016. The Council's old Standing Orders relating to Contracts and Procurement and the new ACC Procurement Regulations also require that a Contracts Register is maintained.
- 2.1.2 In December 2014, Commercial and Procurement Services issued guidance to all Services regarding the purpose of a project to establish a Contracts Register as required by the legislation. This explained how Services were to complete a data return identifying where contracts were in place or expenditure had been incurred that was off contract.
- 2.1.3 The guidance highlighted the benefits of maintaining a Contracts Register in managing and understanding the Council's contractual and financial commitments, both at a Council and Service level. It would also assist in providing business intelligence regarding on and off contract spend, identifying areas that could be subject to collaboration, and help improve efficiency and generate savings.
- 2.1.4 The published Contracts Register is only required by legislation to record Regulated Contracts (ie £50,000 and over for public supplies and services contracts and £2 million and over for public works contracts). However, the Council's Contracts Register will record all contracts so that it can be used to manage the Council's contractual arrangements.
- 2.1.5 The Council published its Contracts Register on the Council's Website by the required date and this was used as an initial reference point to determine if contracts were in place with the sampled suppliers. However, testing in this audit has identified that the Contracts Register is not yet complete, with contracts relating to many of the selected suppliers not recorded, either in full or in part.

2.2 Results of Testing

- 2.2.1 As stated above, spend with 100 suppliers was selected for testing and, where appropriate, assurance was sought that a tendering exercise had been completed and Committee approval for the level of spend incurred had been obtained. No response has been received from officers contacted relating to 13 of the sampled suppliers. Therefore, no assurance can be provided regarding the level of spend with each of these. The results of testing where data was available / provided is detailed below.
- 2.2.2 A large number of contracts in place related to Framework Agreements let by other organisations. The Council's Standing Orders relating to Contracts and Procurement required that use of framework agreements let by third parties be approved by the Heads of Procurement and Legal and Democratic Services. The new ACC Procurement Regulations require this to be approved by the Head of C&PS. In some cases the Council's use of these frameworks had been approved by Committee to ensure that the level of spend through the contract was appropriately approved. However, it was not clear whether the use of all frameworks currently in use had been approved as they were not all detailed in the Council's Contracts Register or the newly introduced register of framework agreements which is currently being populated.
- 2.2.3 Evidence of individual contracts relating to some of the sampled suppliers having been let following an appropriate process was provided by Services which gives assurance over compliance. However, a number of these were not included in the Council's published Contracts Register. Progress is, however, being made with updating the Contracts

Register and some of those contracts identified during testing as being omitted have now been included.

- 2.2.4 Spend with 4 suppliers which was over the EU tendering threshold had not been subjected to tender (or was off contract) and did not have Committee approval. Whilst it isn't necessarily the case that all spend with a supplier should be aggregated for procurement purposes, requirements for the same or similar supplies, services or works across the whole Council should be taken into account in determining the procurement route. Not doing so means that the Council's procurement rules and legislation may be breached, and the Council may have difficulty demonstrating best value in these circumstances. This could expose the Council to potential challenge from businesses that have been denied the opportunity to bid for the supply of goods / services being procured by the Council. Such a challenge could cost the Council significant sums of money in defending any action and potentially paying compensation in respect of any successful challenge along with significant reputational damage.
- 2.2.5 Commercial and Procurement Services has stated that the Category Management approach, which commenced in January 2016, whereby there is more visibility of cross-Council spend, will support the Council in identifying where aggregation may apply.
- 2.2.6 Another area was identified during testing where spend in excess of EU tendering thresholds had not been subject to a current tender although this arose from a situation outwith the Council's control (eg a supplier ceasing to provide a contracted service at short notice). Commercial and Procurement Services has confirmed that this is permitted under procurement legislation and that the Council is working to put appropriate contracts in place to cover this area. In addition, there are some elements of spend with some suppliers that should be subject to contract but which are currently out of contract. Commercial and Procurement Services is working to address these areas.
- 2.2.7 Some of the spend with suppliers had not been approved by Committee as required by both the Council's old Standing Orders relating to Contracts and Procurement and the new ACC Procurement Regulations. Where there was approval it was not always clear whether the approval given covered all of the spend with a supplier for a particular commodity. These results are similar to the results of a previous audit of this area.
- 2.2.8 Some contracts had been let following approval having been given by Committee that the budgeted value of Housing capital plan works be treated as estimated expenditure in terms of Standing Order 1(3) of the Council's Standing Orders relating to Contracts and Procurement. In these circumstances, the Service Director was authorised to instruct appropriate procedures to procure the works referred to without recourse back to Committee. This means that, having approved a high level programme of works, which does not show the detail of the actual works that will be undertaken or in respect of, for example, which properties, Councillors are not involved in the decision making process regarding programming and prioritisation of works. In discussion with the Service, it has been agreed that details held by the Service which show the number of properties per Ward that it is intended will be improved as a result of each element of the capital plan in the forthcoming year will be included in future Committee reports to provide additional context.
- 2.2.9 It is anticipated that the new ACC Procurement Regulations, approved by the Finance, Policy and Resources Committee in June 2016, coupled with revised governance arrangements which should come from the Governance Review will help ensure that more assurance can be provided over compliance in future.
- 2.2.10 In addition, populating the BOrganised contracts management system with more information regarding existing contracts and their approval will provide a greater level of

assurance and help in managing contracts. Whilst the Council published a Contracts Register in April 2016, as required by legislation, it was found to be lacking a significant number of contracts. During the course of this audit further contracts were added to the system and the Council's published contracts register. However, it is not yet complete with details of all contracts that are in place and, as a result, is not yet in a position to be able to adequately assist the Council with managing all existing contracts.

Recommendations

1. The Council should review spend with all suppliers and determine whether this is subject to an appropriately tendered and approved contract. (Major at a Corporate Level.)
2. The published Contracts Register should be updated with the findings. (Significant within audited area.)
3. Where an EU compliant procurement route is required, this should be prioritised and tendering undertaken as soon as is practical. (Major at a Corporate Level.)
4. Where another procurement route is required this should be progressed using a risk based approach. (Major at a Corporate Level.)
5. Steps should be taken to ensure that the Council's Procurement Regulations are understood and complied with and that Committee approval is sought where required.

Service Response / Action

Spend is reviewed on an ongoing basis and compliant procurements undertaken as required, utilising a risk based approach. It is not always the case that all spend with a supplier should be aggregated into one contract or that spend with a supplier which is in excess of the EU threshold is non-compliant.

The Contracts Register is updated on an ongoing basis as details of contracts are made available and this will continue to be the case.

As the new Scheme of Governance is introduced training for relevant personnel will take place in relation procurement compliance and appropriate approval.

Implementation Date

Ongoing

Responsible Officer

Head of Commercial and
Procurement Services

Grading

As detailed above.

AUDITOR: D Hughes

Appendix 1 – Grading of Recommendations

GRADE	DEFINITION
Major at a Corporate Level	The absence of, or failure to comply with, an appropriate internal control which could result in, for example, a material financial loss, or loss of reputation, to the Council.
Major at a Service Level	<p>The absence of, or failure to comply with, an appropriate internal control which could result in, for example, a material financial loss to the Service/area audited.</p> <p>Financial Regulations have been consistently breached.</p>
Significant within audited area	<p>Addressing this issue will enhance internal controls.</p> <p>An element of control is missing or only partial in nature.</p> <p>The existence of the weakness identified has an impact on a system's adequacy and effectiveness.</p> <p>Financial Regulations have been breached.</p>
Important within audited area	Although the element of internal control is satisfactory, a control weakness was identified, the existence of the weakness, taken independently or with other findings does not impair the overall system of internal control.