

ABERDEEN CITY COUNCIL

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<b>COMMITTEE</b>	Audit, Risk and Scrutiny Committee
<b>DATE</b>	30 April 2019
<b>REPORT TITLE</b>	Internal Audit Report AC1914 – Compliance with Procurement Legislation and Council Regulations
<b>REPORT NUMBER</b>	IA/AC1914
<b>DIRECTOR</b>	N/A
<b>REPORT AUTHOR</b>	David Hughes
<b>TERMS OF REFERENCE</b>	2.2

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**1. PURPOSE OF REPORT**

- 1.1 The purpose of this report is to present the planned Internal Audit report on Compliance with Procurement Legislation and Council Regulations.

**2. RECOMMENDATION**

- 2.1 It is recommended that the Committee review, discuss and comment on the issues raised within this report and the attached appendix.

**3. BACKGROUND / MAIN ISSUES**

- 3.1 Internal Audit has completed the attached report which relates to an audit of Compliance with Procurement Legislation and Council Regulations.

**4. FINANCIAL IMPLICATIONS**

- 4.1 There are no direct financial implications arising from the recommendations of this report.

**5. LEGAL IMPLICATIONS**

- 5.1 There are no direct legal implications arising from the recommendations of this report.

**6. MANAGEMENT OF RISK**

- 6.1 The Internal Audit process considers risks involved in the areas subject to review. Any risk implications identified through the Internal Audit process are as detailed in the attached appendix.

## 7. OUTCOMES

- 7.1 There are no direct impacts, as a result of this report, in relation to the Local Outcome Improvement Plan Themes of Prosperous Economy, People or Place, or Enabling Technology, or on the Design Principles of the Target Operating Model.
- 7.2 However, Internal Audit plays a key role in providing assurance over, and helping to improve, the Council's framework of governance, risk management and control. These arrangements, put in place by the Council, help ensure that the Council achieves its strategic objectives in a well-managed and controlled environment.

## 8. IMPACT ASSESSMENTS

<b>Assessment</b>	<b>Outcome</b>
<b>Equality &amp; Human Rights Impact Assessment</b>	An assessment is not required because the reason for this report is for Committee to review, discuss and comment on the outcome of an internal audit. As a result, there will be no differential impact, as a result of the proposals in this report, on people with protected characteristics.
<b>Data Protection Impact Assessment</b>	Not required
<b>Duty of Due Regard / Fairer Scotland Duty</b>	Not applicable

## 9. APPENDICES

- 9.1 Internal Audit report AC1914 – Compliance with Procurement Legislation and Council Regulations.

## 10. REPORT AUTHOR DETAILS

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## **Internal Audit Report**

# **Compliance with Procurement Legislation and Council Regulations**

**Issued to:**

Rob Polkinghorne, Director of Operations  
Steven Whyte, Director of Resources  
Craig Innes, Head of Commercial and Procurement Services  
Jonathan Belford, Chief Officer – Finance  
Andrew Howe, Chief Officer – Digital  
Fraser Bell, Chief Officer – Governance  
Carol Wright, Business and Procurement Improvement Manager  
External Audit

## **EXECUTIVE SUMMARY**

The objective of this audit was to provide assurance that the Council has appropriate arrangements in place to ensure compliance with procurement legislation and internal regulations, and that these are being complied with. A review of procurement across the Council including review of on / off contract spend, the contracts register, and the third party spend process (raising of purchase orders) was therefore undertaken.

The majority of contracts reviewed had been entered into with appropriate prior approval, via procurement routes compliant with the Council's and national regulations, and appear on the Council's published contracts register. However, this was not always the case.

The Council's scheme of governance (including procurement regulations, financial regulations, and delegated powers) requires advance approval of procurement by designated Officers or Committees in excess of specified thresholds. These requirements were revised as part of the transition to the Council's Target Operating Model during 2018 and 2019.

Some of the contracts reviewed predate these changes, and because arrangements have not yet been made to renew them, have not obtained approval on a procurement work plan, as required under the current scheme. It was not possible to identify previous approvals for 8 of 50 cases reviewed. Another contract has been entered into in excess of the contract value approved by Committee.

4 of 50 cases reviewed had aggregate spend in excess of national or European procurement thresholds, outside of existing contracts or without compliant procurement exercises having been undertaken.

The Commercial and Procurement Shared Service (CPSS) is working with Services to review their procurement needs, identify potential cost reductions, and promote compliance. Improvements to management of the contracts database and contract award notices have been recommended and agreed with CPSS, as these did not always include sufficiently detailed up to date information on every contract. CPSS will also implement a process to link contract references and business case references to improve the audit trail between contracts and approvals under the scheme of governance.

The Council has a 'no purchase order, no payment' policy in operation, which is reflected in the Financial Regulations: invoices should not be paid unless there is a matching purchase order, raised in advance. The majority of spend with the 50 suppliers reviewed was subject to a purchase order, or as permitted under Financial Regulations a specific exemption is in effect due to the existence of alternative systems in place to provide assurance over this expenditure. However, this was not always the case. Services will be reminded of the requirements, challenged where necessary, and Finance will review whether further exemptions may be appropriate.

# **1. INTRODUCTION**

- 1.1 The Council makes over £600 million of payments per annum to suppliers, grant funded organisations and individuals through its payments system. A substantial proportion of this spend relates to procurement of goods and services.
- 1.2 The objective of this audit was to provide assurance that the Council has appropriate arrangements in place to ensure compliance with procurement legislation and internal regulations, and that these are being complied with. A review of procurement across the Council including review of on / off contract spend, the contracts register, and the third party spend process (raising of purchase orders) was therefore undertaken.
- 1.3 The factual accuracy of this report and action to be taken with regard to the recommendations made have been agreed with Craig Innes, Head of Commercial and Procurement Services; Jonathan Belford, Chief Officer – Finance; and Andrew Howe, Chief Officer – Digital & Technology.

## 2. FINDINGS AND RECOMMENDATIONS

### 2.1 Procedures and Guidance

- 2.1.1 Public procurement in Scotland is governed by the Procurement Reform (Scotland) Act 2014, and regulated through The Public Contracts (Scotland) Regulations 2015 and The Procurement (Scotland) Regulations 2016.
- 2.1.2 The Council's Procurement Regulations and Financial Regulations were updated in 2018 and 2019. These, in conjunction with supporting guidance notes, provide a framework for providing management with assurance over compliance with legislative requirements, obtaining best value through procurement, and application of internal control requirements.
- 2.1.3 The Council's Procurement Regulations set out that Procurements shall only be carried out by Delegated Procurers who have been designated as such by the Head of Commercial and Procurement Services (CPS) and who hold relevant Delegated Procurement Authority. A system for designating and delegating such authority has yet to be implemented.

#### **Recommendation**

CPS should implement a system for delegated procurement authority.

#### **Service Response / Action**

Agreed. The full implementation of the system for designating and delegating officers is impacted by the development of on line training; this is almost complete.

#### **Implementation Date**

July 2019

#### **Responsible Officer**

Strategic Procurement  
Manager (Category  
Manager)

#### **Grading**

Significant within audited  
area

### 2.2 Contracts Register

- 2.2.1 National Procurement Regulations (see 2.1.1) require publication of a contracts register for all regulated contracts that the Council enters into. Regulated contracts are those in excess of £50,000 for supplies and services, and £2 million for works, over the life of the contract, or over 4 years if not specified. This includes call-off contracts derived from framework agreements.
- 2.2.2 The Council maintains contracts register databases using two systems, due to varying requirements for Care and other contract monitoring, extracts from which are held on its website as the official 'contracts register' for public viewing.
- 2.2.3 A randomly selected sample of 50 suppliers to which payments in excess of £50,000 had been made in 2018/19 was selected, and the contracts register databases interrogated to ensure contracts were in place and had been registered as appropriate. The sample covered payments of over £232 million made over the last four and a half years.
- 2.2.4 The majority of contracts reviewed demonstrated appropriate procurement through local or national frameworks, or were subject to 'light touch' social care commissioning rules.
- 2.2.5 However, details held in the contracts register databases were not always clear and, in some cases, it is not apparent from the contracts register databases that appropriate procurement exercises had taken place, or been appropriately publicised:

2.2.6 In one instance for Software procurement the contracts register database stated that a direct award had been made for a contract in excess of the OJEU threshold. Whilst CPS has stated that a relevant Crown Commercial Services framework was used, there is no reference to it in the contracts register database.

2.2.7 Another payment for Software was made to a supplier which is not directly included within the Crown Commercial Services framework from which the contract was originally derived. CPS has advised that, as the original supplier no longer held the rights to this software, in order to continue using it the Service had to procure it from the original owner. Whilst the legislation allows for direct award of contracts in instances where competition is absent for technical reasons, or to protect intellectual property rights, there is no reference to these changes in the contracts register database, which still references the original framework.

<b><u>Recommendation</u></b>		
The contracts register database should contain details of the procurement route followed.		
<b><u>Service Response / Action</u></b>		
Agreed; a reminder will be issued for future updates.		
<b><u>Implementation Date</u></b>	<b><u>Responsible Officer</u></b>	<b><u>Grading</u></b>
May 2019	Business & Procurement Improvement Manager	Significant within audited area

2.2.8 In another instance (Insurance broker services) a separate procurement exercise was not undertaken for costs in excess of Scottish procurement thresholds.

2.2.9 In three areas EU procurement thresholds have been exceeded through the Council's combined spend on similar products and services or across multiple separate orders (aggregate expenditure), and no specific tendered contracts are in place with the suppliers used in these instances. In respect of all three supplies, the Council is in breach of procurement legislation as a result.

<b><u>Recommendation</u></b>		
Services should be challenged to ensure that there are plans in place to procure goods and services which in aggregate are anticipated to exceed relevant thresholds via a compliant procurement route.		
<b><u>Service Response / Action</u></b>		
Agreed; undertaken as part of both our shift to a commissioning authority with greater focus on prevention and demand. Spend is reviewed council wide; and ongoing third party spend review to consolidate, rationalise and standardise.		
<b><u>Implementation Date</u></b>	<b><u>Responsible Officer</u></b>	<b><u>Grading</u></b>
September 2019	Business & Procurement Improvement Manager	Major at a Service Level

2.2.10 With regards to Agency staff, the Council has alternative pre-tendered framework contracts in place which should be used in the first instance in order to demonstrate best value. In response to a recommendation in Internal Audit report AC1712 that all Services should procure agency staff from contracted suppliers, management agreed and stated that Services should seek advice from C&PS if the contracts did not meet their requirements. The action taken was HR emailing all Services advising them of this in April 2017, and CMT and individual Services were to monitor agency spend which would help reduce the amount of agency staff being procured. Given continued off-contract spend

since this date, this action may not have had the anticipated effect.

**Recommendation**

Where there is a contract, supplies should be purchased under contract, or alternative contracts set up following competitive tendering.

**Service Response / Action**

Agreed. In respect of the example of Agency staff, as part of the 2019/20 budget process C&PS identified Agency as a key project area for review. Service Sessions have been held with officers and we are working towards solutions, for example use of a revised national framework. It should be noted that exigencies of the service do result in use of available resource from off framework suppliers.

**Implementation Date**

September 2019

**Responsible Officer**

Business & Procurement  
Improvement Manager

**Grading**

Significant within audited  
area

- 2.2.11 In total, 10 of the 50 contracts reviewed (over £27 million of expenditure in the last four and a half years), including instances where a contract should have been in place but was not, were not on the register.
- 2.2.12 A further 12 contracts (over £20 million of expenditure) had been amended to extend either the length or the value of the contract, but this had not been reflected on the register. This reduces assurance that the contracts register is complete and accurate.

**Recommendation**

The contracts database should be updated promptly for all new contracts, and changes to the value and term of contracts.

**Service Response / Action**

Agreed – reminder to be issued.

**Implementation Date**

May 2019

**Responsible Officer**

Business & Procurement  
Improvement Manager

**Grading**

Significant within audited  
area

- 2.2.13 Framework agreements are being added to the contracts register database at the point they are adopted for the Council to use. Generally these cover a particular type of supply, which can be obtained on pre-agreed terms from a list of suppliers which have signed up to / competed to join the framework. The terms are available for use from this point, until the framework expiry date, and each differs in terms of whether further competition is required or a direct award can be made to a supplier within the framework. No value is assigned within the contracts register database at this point, as adoption of a framework does not commit the Council to any expenditure. There is no contract until a separate decision is made to use and award a contract to a specific supplier within a framework, for a particular value and duration, and is accepted by the supplier. The duration of a call-off may extend beyond the framework end date, if the terms allow.
- 2.2.14 Call-off contracts of this type are not always being included as separate contracts within the contracts register. Although the Procurement Reform (Scotland) Act states that all regulated contracts must be on the register, and it being included in the Council's Procurement Manual, CPS has stated that it considers that individual lines for call offs are not required, and only contracts subject to further competition require to be registered. As a result the contracts register does not include the full value and extent of all contracts entered into.



- 2.2.15 Over £12 million of expenditure within the sample was part of a call off which had not been registered separately from frameworks which included multiple suppliers but no expenditure committed against any individual supplier. This reduces assurance that the contracts register is complete and accurate.

<b><u>Recommendation</u></b> Framework call offs should be registered as separate contracts.		
<b><u>Service Response / Action</u></b> Agreed.		
<b><u>Implementation Date</u></b> June 2019	<b><u>Responsible Officer</u></b> Business & Procurement Improvement Manager	<b><u>Grading</u></b> Significant within audited area

- 2.2.16 In two cases (Liquid fuels, and Data hosting) although the Council had included call-off contracts on its own register, there was no record on the Public Contracts Scotland website (the national public procurement portal) of these having been awarded. The Procurement Reform (Scotland) Act 2014 (s23(2)) as implemented through section 7 of The Procurement (Scotland) Regulations 2016 requires contract award notices to be published in a specified manner.

<b><u>Recommendation</u></b> All relevant contract awards, including call-offs, should be registered on Public Contracts Scotland.		
<b><u>Service Response / Action</u></b> Agreed – a reminder will be issued.		
<b><u>Implementation Date1</u></b> May 2019	<b><u>Responsible Officer</u></b> Business & Procurement Improvement Manager	<b><u>Grading</u></b> Significant within audited area

## 2.3 Approvals

- 2.3.1 Overall expenditure is approved annually in the Council’s budget. Expenditure on specific projects, programmes, supplies and services is subject to Committee approval. In previous years estimates had to be agreed in advance by service Committees. From April 2018, this has been in the form of business cases and procurement work plans provided to the Strategic Commissioning Committee (and the Integration Joint Board for social care commissioning).
- 2.3.2 In respect of the sample of 50 suppliers, most procurement activity was conducted following Committee approval of either the specific spend, or (as was often the case in the past) as part of estimated expenditure on a wider budget line. The majority are also now included on approved procurement work plans.
- 2.3.3 For the 25 highest expenditure suppliers, additional searches were carried out to identify whether previous approvals were obtained, even where these were superseded by work plans in 2018. It was not possible to find all of the original approvals because Committee are asked to approve Business Cases which include estimates of expenditure and the suggested route to market prior to any award of contract, and therefore the supplier in most cases is not identified.
- 2.3.4 C&PSS hold a record of Business Cases with a unique reference for each and the Committee date approved, but this does not currently link to contracts generated as a

result. Creating an audit trail from contracts back to the original Business Case and Committee approval would provide more assurance that only approved contracts are being entered into, and that the extent (cost and duration) of contracts entered into as a result is within approved limits.

<b><u>Recommendation</u></b>		
C&PSS should include the contract reference within the Business Case file to demonstrate the link between contracts and their original Committee approvals.		
<b><u>Service Response / Action</u></b>		
Agreed. Work is already progressing in this area.		
<b><u>Implementation Date</u></b>	<b><u>Responsible Officer</u></b>	<b><u>Grading</u></b>
May 2019	Business & Procurement Improvement Manager	Significant within audited area

2.3.5 Payments under one contract for Data centre hosting and storage appears to have exceeded the original Committee approvals. Only part of the annual contract cost (£460,000 for hosting) is covered by the Committee approval. Although the Service has identified that budget was available for the total expenditure, the remainder (£681,000 for storage) does not appear to have been included within the Committee approval. At current cost levels the Committee approval (£2.3 million) may be exceeded by £3.4 million over the contract's 5 year term.

<b><u>Recommendation</u></b>		
Where Committee approvals are, or are anticipated to be, exceeded further approval should be sought in advance of continuing to spend.		
<b><u>Service Response / Action</u></b>		
Agreed – reminder to be issued to all officers.		
<b><u>Implementation Date</u></b>	<b><u>Responsible Officer</u></b>	<b><u>Grading</u></b>
May 2019	Business & Procurement Improvement Manager and Chief Officer – Finance	Significant within audited area

2.3.6 Whilst many contracts in the sample are not on current work plans, this is generally because the existing contract was either a one-off supply which does not require to be re-procured, or because the contracts (and any extensions) were previously approved and are not anticipated to expire in the near future.

2.3.7 However, for a small number of payments to individual suppliers selected for review, which are likely to represent recurring requirements, it was not possible to identify prior Committee approval, and they do not yet appear on a work plan. These include:

- Catering supplies (average £1.3 million per annum)
- Telephone equipment and maintenance (average £170,000 per annum)
- PC's and accessories (average £650,000 per annum)
- Software (£60,000 per annum; and £50,000 per annum)
- Insurance brokers (est £70,000 per annum)
- Off-framework agency staff (£250,000 per annum)

- Grounds maintenance supplies (£55,000 per annum)

<b><u>Recommendation</u></b>		
C&PSS should support and encourage services to ensure all of their requirements are covered by procurement work plans, or alternative agreed strategies are in place.		
<b><u>Service Response / Action</u></b>		
Agreed. Reminder to be issued for annual workplans; and focus on putting contracts in place as part of third party spend review.		
<b><u>Implementation Date</u></b>	<b><u>Responsible Officer</u></b>	<b><u>Grading</u></b>
September 2019	Business & Procurement Improvement Manager	Significant within audited area

## 2.4 Ordering Process

- 2.4.1 The Council has a 'no purchase order, no payment' policy in operation, which is reflected in the Financial Regulations: invoices should not be paid unless there is a matching purchase order, raised in advance. The majority of spend with the 50 suppliers reviewed was subject to a purchase order, or as permitted under Financial Regulations a specific exemption is in effect due to the existence of alternative systems in place to provide assurance over this expenditure.
- 2.4.2 In 6 of 50 instances, including property transactions, legal advice, insurance, agency staff, and payments to employee benefits providers on employees' behalf, there is no specific exemption from the requirement to raise a purchase order, but orders have not been raised. Payments have instead been made on the basis of officer approval of individual invoices.

<b><u>Recommendation</u></b>		
Services should ensure that Purchase Orders are raised in advance for all supplies and services unless there is a specific exemption confirmed with Finance in accordance with the Financial Regulations.		
Business Services (Accounts Payable) should implement a process to challenge payment requests not supported by a purchase order, and require a purchase order to be prepared and authorised before payments are made.		
C&PSS and Finance should review the instances identified above and if appropriate update the exemption list.		
<b><u>Service Response / Action</u></b>		
Agreed.		
<b><u>Implementation Date</u></b>	<b><u>Responsible Officer</u></b>	<b><u>Grading</u></b>
September 2019	Business & Procurement and Improvement Manager and Business Services Manager	Significant within audited area

- 2.4.3 The majority of care expenditure (adults and children) is exempt from the requirement to raise a purchase order, as it is recorded and paid through the CareFirst system. A minority of payments to suppliers are still being approved retrospectively (after receipt of an invoice) pending conclusion of a project to ensure all services are logged on CareFirst. The Health and Social Care Chief Finance Officer has instructed that all payments must be on CareFirst or have a separate purchase order raised from April 2019. Children's

Services have issued similar instructions and provided training to staff.

- 2.4.4 Operations services using the Total system raise purchase orders through the system itself, which is covered by an approved exemption. However, two instances (of four cases reviewed using this system) were identified where the orders had been raised retrospectively after receipt of invoices (£22,000 for quarry materials and £72,000 for communications equipment). In another, whilst four quotes were sought for a purchase of £15,000 of grounds maintenance materials, only two were returned and the service did not seek approval from CPS to proceed as required by the Council's Procurement Regulations.

**Recommendation**

Where there are exemptions from raising Purchase Orders, alternative control mechanisms to ensure requirements are specified in advance, supplies and services are received, and costs matched against these, should be in place and applied.

**Service Response / Action**

Agreed; reminder to be issued.

**Implementation Date**

May 2019

**Responsible Officer**

Business & Procurement  
Improvement Manager

**Grading**

Significant within audited  
area

- 2.4.5 Purchase orders have been raised and approved for multiple purchases for a new school project via IT / Digital. However, the authoriser indicated that they had been instructed by other officers to approve the orders – rather than having knowledge of the project and requirements themselves. There was no paperwork attached to the order to support the approval.

**Recommendation**

Officers authorising Purchase Orders should be provided with sufficient information to demonstrate the necessity and appropriateness of the purchase.

**Service Response / Action**

Agreed. Reminder to be issued.

**Implementation Date**

May 2019

**Responsible Officer**

Business & Procurement  
Improvement Manager

**Grading**

Significant within audited  
area

**AUDITORS:** D Hughes  
C Harvey

## Appendix 1 – Grading of Recommendations

GRADE	DEFINITION
<b>Major at a Corporate Level</b>	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.
<b>Major at a Service Level</b>	<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>
<b>Significant within audited area</b>	<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>
<b>Important within audited area</b>	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.