

Internal Audit Report

Procurement - Contract Standing Orders

6 November 2023

CD2302

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| Overall Assessment | Reasonable Assurance |
|-------------------------------|---------------------------------|

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This Internal Audit review is conducted for the City of Edinburgh Council under the auspices of the 2023/24 internal audit plan approved by the Governance, Risk and Best Value Committee in March 2023. The review is designed to help the City of Edinburgh Council assess and refine its internal control environment. It is not designed or intended to be suitable for any other purpose and should not be relied upon for any other purpose. The City of Edinburgh Council accepts no responsibility for any such reliance and disclaims all liability in relation thereto.

The internal audit work and reporting has been performed in line with the requirements of the Public Sector Internal Audit Standards (PSIAS) and as a result is not designed or intended to comply with any other auditing standards.

Although there are specific recommendations included in this report to strengthen internal control, it is management’s responsibility to design, implement and maintain an effective control framework, and for the prevention and detection of irregularities and fraud. This is an essential part of the efficient management of the City of Edinburgh Council. Communication of the issues and weaknesses arising from this audit does not absolve management of this responsibility. High and Critical risk findings will be raised with senior management and elected members as appropriate.

Executive Summary

Overall
Assessment

Reasonable
Assurance

Overall opinion and summary of findings

The design and effectiveness of the controls in place to manage procurement exercises in line with the Council's Contract Standing Orders provide reasonable assurance that the Council's objectives will be achieved. Our audit work has identified areas for improvement that, if not addressed, could expose the Council to associated risks.

Audit testing included sampling testing of eight procurements with a total contract value of £31,821,414 (see Appendix 2 for details of the contracts selected) and identified the following areas for improvement:









- some procurement documents were not approved by all required parties
- procurement documents with missing information and high-level information were noted

- incomplete audit trails to evidence the decisions reached for contract awards during the evaluation phase
- delays to the commencement of a procurement resulting in tender waivers and short-term extensions
- incomplete documented evidence to demonstrate that due diligence checks were carried out for particularly high or particularly low value bids
- no contract handover report for two of the procurements reviewed.

Areas of good practice

- the Contract Standing Orders in place are comprehensive and can be accessed easily by colleagues
- subject matter experts were included in the evaluation teams to provide financial, commercial, technical, and legal input at key points of the evaluation process.

Audit Assessment

| Audit Area | Control Design | Control Operation | Findings | Priority Rating |
|--|---|---|--|-----------------|
| 1. Corporate Strategy, Policy & Procedures |  |  | No issues identified | N/A |
| 2.. Tender Process |  |  | Finding 1 – Approval of procurement documents | Medium Priority |
| | | | Finding 2 – Completeness of procurement documents | Medium Priority |
| | | | Finding 4 - Delays in commencing procurements | Low Priority |
| | | | Finding 5 - Demonstrating due diligence of potential contractors | Low Priority |
| 3. Evaluation and Negotiation |  |  | Finding 3 – Evidencing evaluation phase decisions | Medium Priority |
| 4. Contract Award |  |  | Finding 6 – Contract handover reports | Low Priority |

Background and scope

The [Contract Standing Orders](#) (CSOs) are the Council's legal and operational rules for how it buys goods, services, and works, from purchases of small value to millions of pounds. The CSOs are reviewed annually by the Council, with the last review taking place in 2023. The latest review identified a number of potential improvements that could be made, particularly in relation to effective governance and procurement practice.

The key stages of a procurement are outlined in the Central Procurement Services (CPS) internal procedure as follows:

- Stage 1 – an approved Procurement Requirement Form is received from the service requesting CPS support in order to initiate plans for a contract or framework agreement
- Stage 2 – the Procurement Plan/Strategy development period, which includes gathering information such as benchmark data, market research, spend data, and risk analysis
- Stage 3 – approvals period, where the plan/strategy is agreed with key stakeholders including budget holders, the senior procurement manager, and Finance
- Stage 4 – the Tender stage, where the tender is published, evaluated and a recommendation for award made. Once approved, issue standstill, award, and rejection feedback is performed
- Stage 5 – handover of contract management responsibilities to the relevant service.

The Council's [Commercial and Procurement Services](#) (CPS) supports all service areas across the Council to buy the goods, services and works needed to deliver Council commitments.

Scope

The objective of this review was to assess the adequacy of design and operating effectiveness of the key controls established to ensure compliance with the Council's Procurement Contract Standing Orders. A sample of procurements were reviewed across directorates.

Risks

The review aims to provide assurance in relation to the following Corporate Leadership Team (CLT) risks:

- Financial and Budget Management
- Supplier, Contractor, and Partnership Management
- Resilience
- Fraud and Serious Organised Crime
- Regulatory and Legislative Compliance.

Limitations of Scope

The following areas were specifically excluded from the scope of our review:

- the process following the handover of contract management responsibilities to the individual service areas. This will be covered by a separate internal audit of Supplier and Contract Management currently underway
- testing of controls related to changes to standing supplier data, as this review is focused on compliance with the procurement tendering processes
- targeted testing on the use of waivers during the period or procurement of consultants, as these will be covered by separate audits proposed for 2024-25.

Reporting Date

Testing was undertaken between 8 August 2023 and 5 September 2023. Our audit work concluded on 18 September 2023, and our findings and opinion are based on the conclusion of our work as at that date.

Findings and Management Action Plan

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|----------------|-----------------|
| Finding Rating | Medium Priority |
|----------------|-----------------|

Finding 1 – Approval of procurement documents

Key documents that require approval within the Council’s procurement process include the Procurement Requirement Form, the Procurement Plan/Strategy, the Contract Handover Report, the Director’s Report, and the Contract Award Letter. Testing of 8 procurements undertaken between date and date identified:

2 instances where the Procurement Plan/Strategy had not received the appropriate approval:

- CT2835 - signatures were missing from the Service Area Representative, the Senior Category Manager, and the Finance Representative
- CT0863 - signatures are missing from the Finance Representative. However, evidence of the Procurement Board has been provided where the Procurement Strategy was presented which the Chief Finance Officer chairs.

1 instance where the Contract Handover Report had not been appropriately signed off or finalised:

- CT2761 - signatures were missing from the Service Area Manager and the Senior Category Manager.

Risks

- **Financial and Budget Management** - lack of evidence to verify that key documents have been appropriately scrutinised from the required departments such as finance, commercial, and legal, leading to a procurement commencing without full consideration of the risks and impacts, potentially exposing the Council to financial loss and/or reputational damage.

Recommendations and Management Action Plan: Approval of procurement documents

| Ref. | Recommendation | Agreed Management Action | Action Owner | Lead Officer | Timeframe |
|------|---|---|--|---|------------|
| 1.1 | Management should remind colleagues of the importance of reviewing and approving procurement documents and ensuring that they have been scrutinised and signed off by all required parties. This should occur before the next stage of the procurement commences. | All staff involved in Tender activity reminded of the requirement to ensure relevant stakeholders sign the required documents. 1) by email (immediate) 2) team session. | Executive Director of Corporate Services | Head of Commercial and Procurement Services | 31/12/2023 |
| 1.2 | Management should introduce a process to perform an audit of a sample of completed procurements on a regular basis to confirm that the procurement documents have been reviewed and approved by all required parties. | Audit sample process/procedure for CPS-led procurements to be produced and implemented. | | | 01/03/2024 |

Finding 2 – Completeness of Procurement documents

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|----------------|-----------------|
| Finding Rating | Medium Priority |
|----------------|-----------------|

Key documents that require completion as part of procurements include the Procurement Requirement Form (PRF), the Procurement Plan/Strategy, the Contract Handover Report, the Director’s Report, and the Contract Award Letter. Sample testing identified:

- the timelines set out in the procurement plan for CT1043 were outdated when the plan was approved and were not adhered to throughout the procurement
- the procurement plan for CT1043 recognised in the initial description that the procurement was being undertaken within a very short timeframe. However, no risk was then included within the risk section to reflect that the supplier may not be able to deliver the service within the required timeframe
- the procurement plan for CT1043 did not provide any wider justification as to why other procurement routes were not followed
- 3 instances were identified where the aims and objectives procurement plans were vague and too high-level and lacked specific application to the goods/services being procured

- the procurement plan for contract CT0997 was in a draft form, and did not include information within the timeline section relating to who is responsible for each event
- the PRF for CT0997 was incomplete as there were spreadsheets referenced that were supposed to be a part of the document, these contained details on the software licences required by the Council, but the documents were not embedded.

It is recognised that there is a degree of subjectivity in the observations made above regarding the aims and objectives for procurements.

Risks

- **Supplier, Contractor, and Partnership Management** – incomplete information captured within the procurement documents creates a risk that procurements have commenced without the appropriate scrutiny and challenge over planning, risk assessments, or timelines in place due to a lack of information.

Recommendations and Management Action Plan: Completeness of Procurement documents

| Ref. | Recommendation | Agreed Management Action | Action Owner | Lead Officer | Timeframe |
|------|---|--|--|---|------------|
| 2.1 | Management should introduce a process to perform regular audits of a sample of procurements to ensure that procurement documents have been completed and finalised. | Audit sample process/procedure for CPS-led work to be produced and implemented, supplemented by refreshed training on completion of procurement plans. | Executive Director of Corporate Services | Head of Commercial and Procurement Services | 30/06/2024 |

Finding 3 – Evidencing evaluation phase decisions

Finding
Rating

Medium
Priority

Upon receipt of tender submissions for a procurement, a panel, usually comprised of subject matter experts, will evaluate the quality of the submission by providing a score against each question from the procurement specification. Typically, the Council requires that each panel member performs an individual evaluation on each contractor and then a consensus evaluation is carried out on each contractor by the panel collectively.

If these discussions result in changes in the panel scoring, a panel movement column should be completed to evidence the reasoning behind the scoring change made to ensure that any rationale for the movement of scores is documented and can be referred to if subsequently challenged. There are no guidelines/parameters included in the consensus evaluation document as to when it is appropriate for movements, which increases the risk of bias and interpretation.

Review of a sample of 8 procurements identified:

- 2 instances where the panel movement column of the consensus evaluation document had not been completed for all contractors that were being evaluated. However, one instance a log of minutes from the panel meeting has been provided which shows how the consensus scores were reached
- we have seen emails evidencing the sign off of the matrix for three instances, but others have either been verbally signed off or reliance has been placed on a review of the award letter

- for CT2755, only one supplier response was received. An evaluation of the supplier was performed by three panel members, but the procurement plan did not set a minimum quality threshold, which is commonly employed by the Council across the other procurements tested and is important to safeguard against poor service provision where a low number of responses are anticipated. It is noted that the service being provided would be regulated by third parties, but this justification was not evidenced
- for CT2835, no formal panel scored evaluation was carried out. Two entities expressed an interest following the publication of the Prior Information Notice. The Council then entered into negotiation with both parties which included a Quick Quote being published. However, no further information is captured in the Executive Director's Report to transparently capture the impact of these negotiations, such as any changes to the procurement specification, that would allow approving members to assess the appropriateness of the concessions made.

Risks

- **Legislative and Regulatory Compliance** - potential challenge by an unsuccessful supplier as to why they were not selected. Lack of a minimum quality standard to support decision making could lead to the Council appointing low quality suppliers where they are the only submission. Incomplete records of changes being made during negotiations with suppliers could lead to material movements in the proposed service provision that may have attracted more bids if publicly available.

Recommendations and Management Action Plan: Evidencing evaluation phase decisions

| Ref. | Recommendation | Agreed Management Action | Action Owner | Lead Officer | Timeframe |
|------|--|--|-----------------------|------------------------|------------|
| 3.1 | Management should perform a documented signoff of the consensus evaluation to verify that all columns have been filled out for all potential | Content to apply additional management checks/sign off. There will however be a resource impact on CPS, and it will add to | Executive Director of | Head of Commercial and | 30/06/2024 |

| | | | | | |
|-----|---|---|--|---|------------|
| | contractors, to ensure that the scoring rationale is documented. | timelines for evaluation. Will also require change in procedures/process to be documented. | Corporate Services | Procurement Services | |
| 3.2 | Management should introduce a regular reminder to all colleagues that the evaluation documents should be fully completed for all potential contractors and that the rationale for scoring should be documented. | Will ensure regular reminders are provided to ensure evaluation documents are fully completed and where there are reasons not to, that this is also documented to provide robust audit for decisions made. | | | 31/03/2024 |
| 3.3 | Management should include guidance in the consensus evaluation document as to when it is appropriate for scoring movements to occur. | Commercial and Procurement Services do not agree with this recommendation. Scoring movement can occur on any question being evaluated – that includes when all 3 individual scores are initially the same. Evaluation is subjective. Risk accepted. | N/A | N/A | N/A |
| 3.4 | Management should ensure that justification for the potential inclusion/exclusion of a minimum quality standard is established within procurements where a low number of submissions are anticipated. | Recognise that there are different methodologies which can be applied taking account of the market conditions. This does not always mean a minimum scored weighting as noted above. However, the minimum acceptable level should be recorded with justification. Will address via staff training and Procurement Plan sign off. | Executive Director of Corporate Services | Head of Commercial and Procurement Services | 30/06/2024 |
| 3.5 | Management should ensure that a clear record is captured of any concessions made during negotiations with contractors. This should then be referred to within any subsequent reports produced for approval to allow for scrutiny and challenge. | In the instance checked, there were nil concessions made to the specification requirements as advertised. This was reported in meetings but not fully documented – agree with recommendation the approval report must include more detail where ‘negotiations’ are held. Will issue a reminder and include in refresh training. | | | 30/06/2024 |

Finding 4 – Delays in commencing procurements

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|----------------|--------------|
| Finding Rating | Low Priority |
|----------------|--------------|

Across the 8 contracts sample tested, we identified a trend of delays in the procurements commencing. It is recognised that a number of the procurements sampled occurred during the Covid-19 pandemic and delays were unavoidable given the disruption caused.

CT1043 – the following issues were noted:

- the Council decided in 2019 that they would not extend the contract that was in place with the supplier for the Christmas Market beyond 2021. Instead, they would pursue a new contract with a new supplier
- the Procurement Requirement Form (PRF) for this procurement was submitted in February 2022 despite the decision having been made to undertake the procurement in 2019. Part of the delay in submitting the PRF was due to a public consultation exercise as well as the Covid-19 pandemic. The PRF stated that the contract needed to be completed by Spring 2022 and presented to the Finance and Resources Committee in June 2022 for approval
- it took over one month to produce the procurement plan which was completed on 30 March 2022
- the procurement plan references that an open procurement had to be undertaken due to the tight timeline of this procurement. This also meant that there was no prior information notice published or any supplier engagement carried out. The contract was then awarded in June 2022.

CT2835 - was expected to go to the Finance and Resources Committee in May 2020, but the procurement was suspended in March 2020 due to the building based adult day support services being halted due to the Covid-19 pandemic. A new Prior Information Notice (PIN) was published in 2021 but further delays were encountered due to the building that was proposed to be used not meeting the standard requirements for service delivery.

CT2755 - the procurement process originally began in 2019. This was halted until March 2021 due to NHS Lothian being unable to progress the tender for this requirement, with the Council then having to take the lead for the procurement.

CT2761 - the initial PIN was published in 2019. Due to the pandemic, the original contract was then extended. A new PIN was then published in 2021 and then a further PIN was published in 2022.

Risks

- **Financial and Budget Management** - delays in the procurement process can lead to increases in costs to the Council due to the impact of inflation or may prevent the Council from accessing better value for money through regular market assessments.

Recommendations and Management Action Plan: Delays in commencing procurements

| Ref. | Recommendation | Agreed Management Action | Action Owner | Lead Officer | Timeframe |
|------|--|---|--------------|--------------|-----------|
| 4.1 | Management should ensure that there is sufficient planning in place to identify contracts that are due to expire within the next 12 months to ensure that procurements are undertaken in a timely manner. Consideration should also be given to establishing | Audit recommendation not accepted by Commercial and Procurement Services (CPS). CPS provide reminders to service areas of contracts on the register which are due to expire in the next 12-18 months. | N/A | NA | N/A |

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|--|--|--|--|--|--|
| | <p>clear criteria as to when deferring the commencement of a procurement is appropriate to discourage this from occurring.</p> | <p>Service Areas decide whether a new contract/ re-procurement is required and submit a PRF. Delays in submission of an approved PRF can result in insufficient time to complete a contract prior to an existing contract expiring. CSO's allow for a four month tolerance period, however where this is not sufficient a 'waiver' of CSO's is sought requiring justification and approval. There are many other reasons which lead to 'deferral' of the commencement of a procurement and the existing 'waiver' procedure is provided to capture those instances.</p> | | | |
|--|--|--|--|--|--|

Finding 5 – Demonstrating due diligence of potential contractors

Finding
Rating

Low Priority

Within a procurement evaluation, it is vital that appropriate due diligence is carried out on both a) the financial performance/sustainability of the supplier, and b) the relative appropriateness of the financial values attached to each of the supplier submissions. Emphasis should be given to validating the appropriateness/deliverability of any bids that include a particularly low value (or high value where income is to be received from a supplier).

For the sample of 8 contracts that tested, we identified:

CT1043 - there was a significant difference in the proposed income that would be received by the Council between the successful bidder (£5m) and the other two submissions (£1.2m) for land to be used to deliver the Christmas market. We requested documented evidence to demonstrate how the Council verified that the £5m was a valid bid and how the bid bridged the gap to the other two bids, but there was no documented report or inclusion in the Award of Contracts paper. Through discussions with Place, we were advised that the existing supplier for the contract had an open book audit undertaken by the Culture and Events Team, during which information was gathered on their operational model and used to compare to the model proposed by the successful bidder. An excel spreadsheet capturing the accounts for previous events was provided. We were also provided with evidence that the supplier was asked to confirm that the bid was accurate, and that advice was sought from legal colleagues within the Council on how to manage the high value.

CT0818 - there was a significant difference in price between the successful bidder (£1.7m) and the other two submissions (£2.4m/2.3m). We requested documented evidence to demonstrate the validity of the submitted price relative to the other bids, but no documented evidence could be provided. Through our discussions with Corporate Services, we were advised that the incumbent supplier won the contract and therefore TUPE costs wouldn't have applied to them.

Risks

- **Supplier, Contractor, and Partnership Management** – by not conducting and documenting a thorough due diligence exercise, there is a risk that the contractor's bid is not financially viable. This could expose the Council if the supplier is unable to deliver on the contract and may result in financial loss/reputation damage for the Council.

Recommendations and Management Action Plan: Demonstrating due diligence of potential contractors

| Ref. | Recommendation | Agreed Management Action | Action Owner | Lead Officer | Timeframe |
|------|--|---|--|---|------------|
| 5.1 | Management should ensure that due diligence checks performed on the appropriateness of the financial values within bid submissions are clearly | The due diligence checks are set at the outset with finance colleagues. Where further assurances are required on bid submissions these are also agreed with | Executive Director of Corporate Services | Head of Commercial and Procurement Services | 30/06/2024 |

| | | | | | |
|--|--|---|--|--|--|
| | documented and made reference to within reports requesting approval for award. | finance and/or legal as appropriate. Agree that the information should be referenced with appropriate commercial sensitivity applied. Will issue communications to relevant staff to identify and include as appropriate. Will further address through refresh in training. | | | |
|--|--|---|--|--|--|

Finding 6 – Contract Handover Reports

Finding Rating

Low Priority

Once a procurement process has been completed, Commercial and Procurement Services will produce a contract handover report. The contract handover report contains information including a project summary, a table of tasks completed by the procurement lead, the date of completion, a link to the key contract documents, key contacts, conditions of the contract and any obligations, a forecast of cost, savings or benefits, and documented approval of the handover. This is then shared with the relevant service area to support them with their contract management responsibilities.

Our testing of the 8 procurements identified that there were 2 instances where there was no evidence of a contract handover report on file.





Risks

- **Supplier, Contractor, and Partnership Management** – colleagues taking over the management of the contract may not have sufficient information regarding the key terms and conditions contained within supplier contracts. This could result in poor management of the contract and the Council being delivered poor quality goods or services.

Recommendations and Management Action Plan: Contract Handover Reports

| Ref. | Recommendation | Agreed Management Action | Action Owner | Lead Officer | Timeframe |
|------|--|---|--|---|------------|
| 6.1 | Management should perform a documented check after the award of the new contracts to ensure that the responsibilities of the contract have been handed over to the relevant service area in the form of a signed contract handover report. | Contract Handover reports are not completed for every contract. Where the requirement is low value/risk an alternative Mobilisation plan is completed. Will introduce a final check for CPS-led work to ensure appropriate handover action is completed and signed prior to moving a project from stage 4 to stage 5. | Executive Director of Corporate Services | Head of Commercial and Procurement Services | 30/06/2024 |

Appendix 1 – Control Assessment and Assurance Definitions

| Control Assessment Rating | | Control Design Adequacy | Control Operation Effectiveness |
|-------------------------------|---|--|--|
| Well managed |  | Well-structured design efficiently achieves fit-for purpose control objectives | Controls consistently applied and operating at optimum level of effectiveness. |
| Generally Satisfactory |  | Sound design achieves control objectives | Controls consistently applied |
| Some Improvement Opportunity |  | Design is generally sound, with some opportunity to introduce control improvements | Conformance generally sound, with some opportunity to enhance level of conformance |
| Major Improvement Opportunity |  | Design is not optimum and may put control objectives at risk | Non-conformance may put control objectives at risk |
| Control Not Tested | N/A | Not applicable for control design assessments | Control not tested, either due to ineffective design or due to design only audit |

| Overall Assurance Ratings | |
|------------------------------|--|
| Substantial Assurance | A sound system of governance, risk management and control exists, with internal controls operating effectively and being consistently applied to support the achievement of objectives in the area audited. |
| Reasonable Assurance | There is a generally sound system of governance, risk management and control in place. Some issues, non-compliance or scope for improvement were identified which may put at risk the achievement of objectives in the area audited. |
| Limited Assurance | Significant gaps, weaknesses or non-compliance were identified. Improvement is required to the system of governance, risk management and control to effectively manage risks to the achievement of objectives in the area audited. |
| No Assurance | Immediate action is required to address fundamental gaps, weaknesses or non-compliance identified. The system of governance, risk management and control is inadequate to effectively manage risks to the achievement of objectives in the area audited. |

| Finding Priority Ratings | |
|--------------------------|---|
| Advisory | A finding that does not have a risk impact but has been raised to highlight areas of inefficiencies or good practice. |
| Low Priority | An issue that results in a small impact to the achievement of objectives in the area audited. |
| Medium Priority | An issue that results in a moderate impact to the achievement of objectives in the area audited. |
| High Priority | An issue that results in a severe impact to the achievement of objectives in the area audited. |
| Critical Priority | An issue that results in a critical impact to the achievement of objectives in the area audited. The issue needs to be resolved as a matter of urgency. |

Appendix 2 - Contracts sampled

| Contract Reference | Description |
|--------------------|--|
| CT2792 | A clerk of works framework to support the delivery of the Council's capital construction projects. |
| CT0997 | Purchase of Microsoft licences for the entire Council. |
| CT2755 | A service that offers overnight short break support for children with severe intellectual disability and autism spectrum disorder. |
| CT2835 | To provide day care opportunities throughout Edinburgh for older people and people living with dementia. |
| CT0818 | To provide new arrangements for offsite storage and management of paper records. |
| CT2761 | Therapeutic play activities for children and young people that have been affected by bereavement. |
| CT0863 Lot 1 | To provide access to independent advocacy services. |
| CT1043 | Edinburgh Christmas Market. |