



ORKNEY
ISLANDS COUNCIL

INTERNAL AUDIT

Procurement

Audit Report

2016/17

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Distribution :
Executive Director Corporate Services
Head of IT and Facilities
Procurement Manager
Head of Finance

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EXECUTIVE SUMMARY

- Our audit has confirmed that good progress has been made as to the governance and controls to the Council's procurement activity. Initiatives have included: the production of a revised Procurement Strategy 2016-2018 and the reconvening of the Procurement Members and Officers Working group from July 2015.
- Governance and controls within procurement continue to be enhanced with activity currently being carried out to update the Council's Sustainable Procurement Strategy and the Officers procurement manual.
- Our audit confirmed that, for the projects examined, the requirements of the Council's Contract Standing Orders were generally complied with for procurements entered into on the Council's behalf.
- Several areas of procedural good practice were identified from the examination of ten procurements. These included, inter alia, advertising of procurements on Public Contracts Scotland's website (PCS), controlled opening of tenders, the use of rational evaluation scoring methods including most economically advantageous tender method (MEAT) that takes into account whole life costs rather than just initial outlay, certification documents signed by tenderers of bona fide tendering, an identified budget account code for spend, good communication to successful and unsuccessful tenderers and the use of standard contract variation forms where appropriate.
- The report includes 6 recommendations which are set out in the table below. The priority headings assist management in assessing the significance of the issues raised.
- Responsible officers will be required to update progress on the agreed action via Aspireview.

Total	High	Medium
6	0	6

The assistance provided by officers contacted during the course of the audit is gratefully acknowledged.

INTRODUCTION

Going forward, all Scottish Local Council's need to be compliant with the new procurement rules which have (and continue to come) into force in Scotland, as a result of changes to the EU regulations and recent legislation introduced into Scots law.

New statutory provisions which have recently come into effect include, inter alia, the Procurement Reform (Scotland) Act 2014 ("the Act"), and since 18 April 2016 the Public Contracts (Scotland) Regulations 2015 and the Procurement (Scotland) Regulations 2016.

In addition to the regulations the Scottish Government has produced statutory guidance which describes how public bodies should support the ambitions of the Act.

This internal audit included a high level focus on the Council's preparations and delivery in meeting the requirements of legislative changes to procurement.

The audit also reviewed ten specific contracts for compliance to legislation, Council policy and procedures. The contracts were selected from the 2015/16 financial year and so confirmed compliance to regulations in force at that time.

AUDIT SCOPE

The purpose of the audit is to review as to whether:

1. The Procurement function has the necessary authority, position and resources to perform effectively.
2. The Council has an appropriate strategy governing its Procurement activities.
3. Procurement has addressed the legal framework and recent legislative changes.
4. Procurement has sound business processes throughout the procurement cycle.
5. Procurement has modernised its approach.
6. Procurement can demonstrate robust performance management, interfaces well with services and contributes to organisational efficiency.

Applicable Period:

Audit testing has focused on the past 18 month period.

BACKGROUND

The Council spends over £50m per annum with over 2,500 third party providers.

To address the introduction of the new procurement rules, the Council has carried out much recent activity in developing governance over its procurement activity including the development of a procurement strategy, procedures, action plans and employee training.

The Procurement Members and Officers Working group have met on 3 occasions since July 2015, with a remit, inter alia, to provide the political and strategic oversight of the procurement policy of the Council. The next meeting of the new group is planned for September 2017.

Initiatives have also included the development of a Procurement Implementation Plan and an 11 point action plan by the Procurement Manager and the Change Programme respectively.

In July 2017 the Council took part in the Procurement & Commercial Improvement Programme (PCIP) audit carried out by Scotland Excel. PCIP replaces the previous Procurement Capability Assessment (PCA).

Recent Legislative Changes

A new Directive on public procurement, inter alia, was adopted by the European Council on 24 February 2014.

Transposing the rules of the Directive into Scots law has led to a suite of new public procurement legislation being introduced since 2014, with effect from 18 April 2016. This legislation included, inter alia, the Act, the Public Contracts (Scotland) Regulations 2015 and the Procurement (Scotland) Regulations 2016.

The Act, resulted in a greater proportion of the Council's procurements being regulated. The Act places new statutory duties on Councils and other relevant public bodies for "regulated procurements", i.e. for goods and services contracts with a total value over £50,000, and for works with a total value over £2m.

The Act created a number of new obligations for Councils and other public requirements including:

1. to maintain and publish online a contracts register for all regulated procurements,
2. to prepare and publish an annual procurement strategy and forward plan,
3. to prepare and publish an annual procurement report,
4. to meet the "sustainable procurement duty".

The Public Contracts (Scotland) Regulations 2015 effectively replaced the Public Contracts (Scotland) Regulations 2012 and made a significant number of procedural changes with the intent of making public procurement faster and easier.

The Procurement (Scotland) Regulations 2016 provide additional detail in a number of areas within the Act, examples of which are the rules for drafting technical specifications for procurement documents and how the value of procurement should be estimated.

Audit Findings**1.0 Procurement strategy.**

- 1.1. The Council has produced a revised Procurement Strategy for 2016-2018. This was launched in draft form at the 'Meet the Buyer' event on the 25 August 2016, advertised for consultation on the Council's website and approved by the Council on 13 December 2016.
- 1.2. Both the approved Procurement Strategy 2016-2018 and forward plan have been published on the Council's website.

2.0 Addressing recent legislative changes.

- 2.1. The Council maintains, on the PCS portal a publicly available live register of contracts awarded. A link to the register is provided within the Council's website.
- 2.2. The Act, inter alia, places a new requirement on the Council to review and report upon whether regulated procurements complied with the Council's procurement strategy for the financial year. The Council's first annual procurement report will be required for the period ending 31 March 2018.
- 2.3. The Act places a "Sustainable Procurement Duty" on public bodies, requiring them to consider how, through their procurement activities, they can improve economic, social and environmental wellbeing; reduce inequality; promote innovation; and involve small and medium sized enterprises (SME's), the third sector and supported businesses. The Act encourages the use of lots in improving access to tendering from SME's and requires a local authority, for contracts in excess of £4 million, to consider imposing community benefit requirements within contracts. The Council's most recent Sustainable Procurement Policy is dated 2013-15. A revised Sustainable Procurement Policy has been drafted and following an internal consultation will be launched for public consultation at the Council's next 'Meet the Buyer' Event scheduled for 5 October 2017.
- 2.4. It is recommended that the Council updates its Sustainable Procurement Policy and guidance to ensure that procurement activity considers where value for money can be derived in supporting broader economic, social, environmental and sustainable benefits as required by the Act.

Recommendation 1

- 2.5. The Council's current Procurement manual is dated March 2013 and is being updated to encompass relevant recent changes in EU Law, Scots Legislation, Council Policy and Strategy or guidance.
- 2.6. Significant progress has been made towards the updating of the Procurement handbook and we are advised that its delivery will be supplemented by the rollout of training for delegated officers who carry out procurement activity on behalf of the Council.
- 2.7. In order to facilitate Officers with up to date and practical procurement guidance, the Council's procurement manual update should be completed promptly and then rolled out together with the training update provided to Officers.

Recommendation 2

3.0 Business Processes.

- 3.1. Ten procurements with a value between £19,000 and £315,000 were selected to check compliance to standing orders. Potential risk factors were taken into account when selecting the procurements.
- 3.2. All ten procurements were advertised on the PCS. All procurements subject to European legislation were advertised on the Official Journal of the European Union. Sustainability practices were enhanced during 2016 with known local suppliers being invited to register on PCS for potentially suitable procurements.
- 3.3. PCS has inbuilt controls so that tenders cannot be accessed until the tender closing date and time. Postal responses to tenders are addressed to, and held within the Chief Executive's Service until the set time for opening. Tenders, irrespective of being delivered electronically or by post were opened in the presence of two Officials, one of at least grade nine and one Member of the Council.
- 3.4. Each tender was assessed on a clear and consistent scoring method. Where applicable Most Economically Advantageous Tender scoring was used which takes into account value for money and whole life criteria, rather than just initial lowest cost.
- 3.5. In all procurements the budget code applicable to the spend was identified.
- 3.6. Financial assessments were carried out on suppliers to all procurements which were above the value of spend where financial assessments are required.
- 3.7. In all ten procurements the tender awards document was reviewed and approved by three senior Officers within the Council.
- 3.8. Unsuccessful tenderers, at the regulated level, were notified in writing of the successful tender, advised why they were not successful and given feedback to assist them in making future tender applications. A ten day cooling off period was given where required.
- 3.9. Where required, standard variation forms were used appropriately.
- 3.10. In all ten procurements the successful tenderer was notified promptly.
- 3.11. The Council's standard terms and conditions of Procurement shown on its website generally need updating. An overall update of the Council's standard terms and conditions is being carried out by Legal Services with more recent versions already in use by the Procurement Team.
- 3.12. It is recommended that the Council's Standard Terms and Conditions for procurement are brought up to date and the most current version published on the website

Recommendation 3

- 3.13. Contract Standing Orders (CSO 15.1 and 17.1) of the Council state, inter alia, that in circumstances where contracts are in excess of £10,000 and less than either £50,000 for the supply of goods and services or £2,000,000 for works and fewer than three quotations are received a written record shall be retained as to the reason for this. Whilst all contracts in the selection were advertised accordingly and the number of tenderers is included in the award documentation recommendation report, the reason for receiving less than 3 tenders is not always recorded fully in accordance with contract standing orders.

3.14. The reason, if applicable, for receiving less than 3 quotations should be recorded in accordance with contract standing orders.

Recommendation 4

3.15. There are a few references within the Council's Financial Regulations to indexing within the Contract Standing Orders which are now out of date due to the updating of the latter in June 2016.

3.16. It is recommended that the Head of Finance carry out these minor amendments, under delegated authority.

Recommendation 5

3.17. A review of user access rights within PCS allowed privileges to a former employee to place framework orders, quick quotes and opening of tenderers quotations on behalf of Council. The portal is web based and remotely accessible outwith the Council's networks. To gain access to documents such as tender returns it is understood that two individual Council's e-mail account holders are required to open the Tender Post-box which provides a level of secondary control, however documents can be uploaded and comments appearing as from the Council can be made remotely. This increases the importance of the need to update user privileges promptly upon staff changes.

3.18. It is recommended that a procedure is introduced so that the Procurement Manager is notified of staff leaving and that access rights within PCS are updated promptly upon employees leaving the Council. A regular review of access rights should be carried out to confirm that only authorised users have access.

Recommendation 6

	Recommendation	Responsible Officer	Management Comments	Agreed Completion Date
	Addressing recent legislative changes.			
1	The Sustainable Procurement Policy should be updated. Medium Priority	Procurement Manager	The Policy has been updated and will be launched for public consultation on 5 October 2017	November 2017
2	The procurement manual update should be finalised and then rolled out together with a training update provided to Officers. Medium Priority	Procurement Manager	Procurement Manual update nearing completion awaiting recommendations for the recent PCIP assessment. ILearn Training Modules under development	March 2018
	Business Processes.			
3	The Council's Standards Terms and Conditions to procurement should be brought up to date. Medium Priority	Procurement Manager	Up to date Terms and Conditions are being used on a transactional basis. A reviewed complete suite of Council's Standard Terms and Conditions will be uploaded to the website when available.	March 2018
4	The reason, where applicable, for receiving less than 3 quotations should be recorded in accordance with contract standing orders. Medium Priority	Procurement Manager	Procurement Manual to be updated to include reference to record of reason, where applicable, for receiving less than 3 quotations as an additional section in the Contract Award Recommendation Report.	September 2017
5	The Head of Finance should carry out referencing updates within the Council's Financial Regulations as a result of updating its Contract Standing Orders. Medium Priority	Head of Finance	The necessary updates to correspond to the revised Contract Standing Orders will be completed.	March 2018
6	A procedure should be introduced so that Procurement are notified of staff leaving and that access rights to Public Contracts Scotland (PCS) portal are updated promptly upon employees leaving the Council. A regular review of access rights should be carried out to confirm that only authorised users have access. Medium Priority	HR and Procurement Manager	Notification of all Council Employee leavers should be passed to the Procurement Manager for cross checking against the User list on PCS. Procurement Manager to carry out a quarterly review of the PCS users list.	November 2017

Priority	Assessment
High	<ul style="list-style-type: none"> • Key control absent or inadequate; • Serious breach of regulations; • Significantly impairs overall system of internal control; • No progress made on implementing control; • Requires urgent management attention.
Medium	<ul style="list-style-type: none"> • Element of control is missing or only partial in nature; • Weakness does not impair overall reliability of the system; • Recommendation considered important in contributing towards improvement in internal controls; • Management action required within a reasonable timescale.
Low	<ul style="list-style-type: none"> • Control exists or on target to be implemented within timescales; • Minor weakness, does not compromise overall system control; • To be considered by management within a reasonable timescale

Note:

It should be recognised that where recommendations in the action plan are not implemented there may be an increased risk of a control failure. It should be noted however that it is the responsibility of management to determine the extent of the internal control system appropriate to their area of operation.