

Governance, Risk and Best Value Committee

10.00am, Tuesday, 4 June 2024

Update Report – Supplier and Contract Management Internal Audit 2023/24

Executive/routine
Wards

1. Recommendations

- 1.1 Governance, Risk and Best Value Committee is asked to:
 - 1.1.1 Note the report, in response to the Addendum by SNP Group raised at GRBV Committee on 20 February 2024 on the supplier and contract management audit only.

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Report

Update Report – Supplier and Contract Management Internal Audit 2023/24

2. Executive Summary

- 2.1 This report responds to the request from Governance, Risk and Best Value Committee to report back on the reasons why there has been a failure of contract management and what specific actions are being taken in those service areas to bring contract management back in line with standing orders.

3. Background

- 3.1 The request at GRBV on 20 February 2024 included the following:-
- 3.1.1 Which Directorates/Service Areas are responsible for the top ten highest levels of spend where there are contracts classed as 'non contract spend' and not managed in line with contract standing orders;
 - 3.1.2 Which Directorates/Service Areas have the top ten highest number of contracts where there has been a failure to carry out PVG, insurance and compliance checks
 - 3.1.3 Which Directorates/Service Areas have the top ten highest number of contracts where there is no named contract manager, or the wrong contract manager is named
 - 3.1.4 Which Directorates/Service Areas have the top ten highest number of contracts that have not been entered into the contract register
- 3.2 The items above 3.1.1 and 3.1.4 are the same, in that failure to enter details to the council contract register results in a contract being classified as 'non contracted spend'. Contract Standing Orders require that all goods/service contracts over £5,000 and all works contracts over £10,000 be added to the contract register within five days of a contract being awarded.
- 3.3 The non contracted spend entries are identified after the monthly financial close, when expenditure from all payment systems is collated into a single spend report. The information is at Supplier level and not by contract. Further investigation is needed by Service Areas to identify what the Supplier is delivering and why details are not included in the contract register. There may be high or low volume

transactions related to the Supplier which can show high or low volume spend values. The audit report was focussed on high value spend.

- 3.4 Commercial and Procurement Services (CPS) are working with Service Areas to ensure best value approaches and compliance with CSOs are addressed. This includes seeking alternative arrangements where appropriate due to for example aggregation of spend indicating that a tender should be undertaken.
- 3.5 In addition, the request from GRBV sought further information in relation to the risks associated with the failures in contract management, (identified in the audit) particularly whether any children and young people or vulnerable adults have been put at risk, alongside financial and other risks.

4. Main report

- 4.1 CPS provide quarterly reports to Executive Directors which include details of Suppliers identified as non-contracted, the report highlights the Top 20 by value and the percentage of spend this represents in terms of overall contract spend compliance. The summary provides month by month information relating to the previous four months and for context the Council wide compliance percentage. All but one Directorate is above the 93% target for contracted spend levels.
- 4.2 To address the points raised an up to date cumulative report of non-contracted spend from April 2023 to February 2024 was prepared. This report identified that the top ten Suppliers not meeting contract standing orders were in the Health and Social Care Partnership (HSCP) and all related to care services which have been classified by the service area in the main as 'spot contracts'.
- 4.3 A 'spot contract' is one which is placed for an individual service user with an external Provider of care services. Under procurement regulations, the method used to determine if a contract requirement should be publicly tendered is calculated by assessing if the value threshold for the requirement is caught by the regulations. For care contracts, defined as 'light touch' a total estimate of £ 522,950 excl. VAT over the term of the contract is the threshold for tendering. The regulation further states that "A contracting authority must not sub-divide a contract with the effect of excluding the contract from the application of these Regulations unless such sub-division is justified by objective reasons".
- 4.4 The 'spot contract' approach used by the service area is one which has been around for many years, however the volume of these has escalated since the Covid-19 pandemic. The urgency to secure placements for service users drove the change alongside a withdrawal of Providers who were previously under Tendered service contracts to deliver services such as Care at Home. This practice has continued with Locality Managers taking a lead responsibility for approving funding for spot placements. Each placement (spot) is secured with Council standard Terms and Conditions, along with a defined service specification and the price is agreed locally using standard rates as a benchmark. Care Home 'spot' placements which are also listed as 'non-contracted' are made using the National Care Home

Contract terms which are negotiated by Scotland Excel, Scottish Care and CCPS Scotland Excel on an annual basis.

- 4.5 As stated, spot contracts placed by the HSCP are based on individual need therefore the fluid nature of this form of commissioning is labour intensive as would require continual update of the contracts register. The service area therefore has developed tools to monitor spend across home based care and care homes. CPS is working with the service area to strengthen the reporting further. Care at Home services for Older People which account for circa £50m per year and were previously fulfilled by regulated procurement arrangements are due to be re-tendered later this year, the project has been delayed due to ongoing service reviews and budget constraints. Once the procurement is complete this spend will be 'contracted' and fully compliant with CSOs. There is also a pipeline of projects within the service to tender other services which will address the compliance issues.
- 4.6 The council does not currently have a central record of checks which are due and checks which have completed in line with the contract management requirements of each contract as no single database for contracts is held. Records of checks undertaken on contracts are held by the contract manager in the service area. Initial Supplier checks are undertaken by CPS where a contract has gone through a tendering process, this will include working with finance colleagues to set and apply financial standing checks, and additional checks required for the service e.g. level of insurance, certification in relation to mandatory requirements around health and safety etc. The contract handover report provides details on the standard checks and frequency for review.
- 4.7 The checks in place for HSCP in relation to those identified at 4.2 above have been provided in Appendix 2. The central contract management team undertake these checks on appointment of new Providers. The HSCP Contracts Team have undertaken monitoring activity with all home based care providers in February 2024. This provided assurance on appropriateness of operating policies and procedures including safe recruitment. The monitoring activity included desktop and in-person assurance. It can be noted that in relation to the service in question, there was no evidence to suggest the Provider was operating without appropriate PVG checks in place, see paragraph 4.11. Monitoring of non-home based care contract will be undertaken throughout 2024-25.
- 4.8 Each entry on the contract register is required to have a named contract manager, to ensure accuracy of this information and other details relating to live contracts a spreadsheet/register cut is provided to Executive Directorates to review and provide CPS with updates/amendments. To supplement the regular review CPS worked with HR colleagues to ensure those leaving the council notify the team administering the contract register as part of the council 'Leaver checklist'.
- 4.9 Currently the contract register has a contract manager allocated to all but two entries out of a total of 1300 contract register entries, one for a 'public wireless concession', the other for IT supplies purchased from a Scottish Procurement Framework across all service areas and we are working with service areas to

address. The audit looked at non-contracted entries which are not on the register, in follow on discussions it was confirmed that there is not always a dedicated contract manager allocated to manage all 'spot contracts' due to the high volumes and resources available – for example c100 Providers for home based care. However, regular contact with key Providers is in place as the service engages to coproduce the future service design. In the latest review of contract register undertaken at the end of April 45 contract manager details were amended.

4.10 For completeness, as well as reviewing adult services, a further check of children's services confirmed that key onboarding checks of service provider suitability is made on local purchase decisions within delegate authority, with the central commissioning team addressing on higher value contracts.

4.11 In terms of risks associated with the failures in contract management, the audit identified that during the pandemic compliance checks for adult services had stopped, these were resumed after the audit and completed in February 2024 (as above). The potential impact of not completing compliance activities is provided in the summary below, though the specific checks may vary depending on the type of contract. Following recommencement of checks within the service area there is nil evidence that the risks outlined below have occurred.

4.11.1 **PVG** – Employers are responsible for ensuring vulnerable children/adults are safe, failure to ensure the check is complete could put the safety of service users at risk. There are nil reported incidents in relation to the check not being undertaken during/post pandemic. Providers have a duty to ensure PVG's are completed where they are working with vulnerable groups, the Care Inspectorate, as a scrutiny body also ensure providers implement the PVG scheme and use their powers to refer providers to Disclosure Scotland where appropriate. Council checks provide added assurance when completed in line with onboarding checklists and regular reviews.

4.11.2 **Insurance** – adequate levels are in place to address potential liabilities arising from accidents/incidents during the contract term, policies are renewed on an annual basis. Failure to hold the required policies could impact the Council financially and reputationally should an incident occur.

4.11.3 **Finance** – for key contracts a regular check is recommended to ensure the delivery organisation is stable and has the capacity to meet the contract demands. Supplier failure can be costly and disruptive.

4.11.4 **Performance** – regular reviews of Supplier performance against specification requirements or performance indicators are to key to ensuring best value outcomes are achieved, failure to manage performance can lead to financial and reputational impact.

4.11.5 **Other** - risks may be service specific, for example for essential services this will include ensuring that a Business Continuity Plan is in place to prevent disruption to services should an incident occur.

- 4.12 In line with the audit recommendations CPS are working with the Risk Team to produce a training pack for delivery to the contract managers across the Council. The key risks are currently defined as Financial, Non-Financial (e.g. Health & Safety), Strategic and Reputational, the training will explore these in further detail. In addition, compliance reviews will continue to be undertaken to reinforce the contracts management guidance and tools.

5. Next Steps

- 5.1 This report will be referred to relevant executive committees responsible for the service areas covered by the original report.
- 5.2 A further audit of contract management will be carried out in two years' time.
- 5.3 The scope for a further audit which focusses on non-contracted spend and waiver of contract standing orders is progressing and the audit is expect to report in the Autumn.
- 5.4 Contract management model is under review and further recommendations relating to this activity will be provided as part of the Medium Term Financial Plan updates.

6. Financial impact

- 6.1 The report has no financial impact, however, the next steps to identify and improve controls will improve governance and potentially support budget decisions.

7. Equality and Poverty Impact

- 7.1 There are no direct equality or poverty impacts arising from this report.

8. Climate and Nature Emergency Implications

- 8.1 There are no climate or nature emergency implications arising from the report, however, where procurement practices are not being followed council policy is not being applied and/or reported.

9. Risk, policy, compliance, governance and community impact

- 9.1 The earlier audit identified the risks from ineffective contract management and procurement practice where contract standing orders are not followed. CPS are working with the Risk management team to address the issues as per the management actions agreed in the audit report.

10. Background reading/external references

- 10.1 [Internal Audit Update Report: Quarter 3 2023/24](#) Contract and supplier management

11. Appendices

- 11.1 Appendix 1 – HSCP - New contract checks

Appendix 1

City of Edinburgh Council Health & Social Care Contract Award Checklist

Outline

When contracts are awarded to organisations, they may have been through a procurement process and the information/knowledge of them will be variable. The following list should be used as guidance only and information already available, through tender information, past records, regulatory information etc. should be used, prior to any visit, rather than create unnecessary duplication. Some areas will not be applicable. The list can be added to for particular, or specialist, services where other criteria need to be checked and to meet the requirements of the service specification.

These checks should ideally be carried out prior to the contract starting.

This checklist covers contract award or initial contact and further consideration is required regarding ongoing monitoring requirements.

Organisation Details

Contact Details	
Memorandum of articles and company status	
Registered Company number	
Charitable status & number	
Registration status & number (Care Inspectorate)	
Latest Regulatory reports, gradings and any outstanding actions	
Performance & capacity targets/ project plan	
Agency or sub-contracting arrangements	

Financial

Last 3 years of audited accounts	
Evidence of VAT status	

Insurance & Indemnity

Public liability (£5 million)	
Employer's liability (£10 million)	
Indemnity cover	

Staffing

Induction	
Training	
Qualification levels & registration	
Supervision & support	

Recruitment (should meet “Safer Recruitment Through Better Recruitment” Requirements¹)

Equal opportunities process	
Formal interview process	
Reference checks from identifiable sources	
PVG/Disclosure checks (including overseas checks where relevant)	
Right to work in UK (where relevant)	
Statement in terms of Rehabilitation of Offenders	

Information for Service Users & Carers

Information pack	
Complaints process	
Contact details for provider	
Participation & involvement	
Feedback process	

Other Policies & Procedures

Adult Protection	
Child Protection (where relevant)	
Whistle-blowing	
Care planning & review	
Risk assessment	
Complaints/ complaints register	
Health & safety including emergencies & notification	
Non-discrimination, equalities & diversity	
Business continuity	
Data protection	
Dealing with service users' money & finances	
Medication	
“No entry” procedure	
Quality assurance process	
Measuring outcomes	

Service Specific Issues

Any issues specific to service within specification	
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¹ Available at: <https://hub.careinspectorate.com/media/5419/safer-recruitment-guidance-2023.pdf>