

Walsall Council  
Internal Audit Service

**Final Account for  
Leighswood Children's Centre**

Audit Report 2008 / 2009

August 2008

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## **EXECUTIVE SUMMARY**

### **A. Introduction**

1. An audit review of the contractor's final account for Leighswood Children's Centre was undertaken during August 2008 as part of the annual audit plan. The examination was performed in accordance with the requirements of financial and contract rule 15.3 (b) which requires:

The contractor's final account shall be made available to the Chief Internal Auditor wherever the contract's value is £150,000 or more along with details relating to obtaining authority, planning, tendering, award, operation and payments relating to the project,
2. The objectives of the audit were to assess the adequacy of controls governing financial and management arrangements, to assess the implementation of previously agreed actions and to seek assurance that:
  - Contractors and consultants have been chosen and appointed in accordance with the council's requirements for a contract of this value,
  - All appropriate documentation has been obtained from the contractor and a suitable contract created,
  - The works have been controlled in accordance with contract's requirements and the council's financial and contract rules, and
  - All charges by and payments pertaining to the works are shown in the contractor's accurate and timely final account.
3. The scope of the audit is as set out on the contents' page. An overall opinion, points of good practice and an improvement action plan for each of the areas audited are attached. Actions for improvement, in general, are prioritised as high (\*\*\*), medium (\*\*) or low (\*).
4. Within a short period of issuing the final audit report, the head of service will be contacted to formally confirm that the action plan has been implemented as agreed. Managers should be aware that a formal response will be required in all cases and that details of these responses will be included within the internal audit quarterly monitoring report to the Audit Committee.
5. Under the council's corporate governance arrangements, the outcomes of audits are reported routinely to the Audit Committee. This includes providing an overall report opinion and details of agreed actions successfully implemented.
6. The committee has expressed concern with a failure, in a number of instances, to implement agreed actions. The committee will seek explanation from managers failing to ensure that appropriate action is taken.
7. All audit reviews undertaken include checks that previously agreed actions have been implemented. Due to the disappointing level of overall achievement in this area, executive directors have asked for regular updates on all internal audit reviews undertaken together with details of actions agreed and actually implemented. This is included as a standing item for discussion at all directorate leadership team meetings.

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**B. Overall Audit Opinion**

1. Internal audit is able to give no assurance opinion on the system of internal control operating within the contractor's final account for Leighswood Children's Centre as described below:

Overall Audit Opinion		
	Full assurance	Full assurance that the system of internal control is designed to meet the organisation's objectives and controls are consistently applied in all the areas reviewed.
	Significant assurance	Significant assurance that there is a generally sound system of control designed to meet the organisation's objectives. However, some weakness in the design or inconsistent application of controls put the achievement of particular objectives at risk.
	Limited assurance	Limited assurance as weaknesses in the design or inconsistent application of controls put the achievement of the organisation's objectives at risk in the areas reviewed.
➔	No assurance	No assurance as weaknesses in control, or consistent non compliance with key controls, have resulted in failure to achieve the organisation's objectives in the areas reviewed.

2. Some good practices were noted during the audit, including;

- the use of a tender registration form,
- evidencing and pricing of all valuations and
- provision of a quantity surveyor's final account.

A number of areas for improvement have been identified, including;

- need to obtain authority to procure or to accept the tender,
- failure to appoint the contractor within the time that his tender is valid,
- failure to provide a surety,
- failure to evidence insurance cover,
- lack of race relations, health and safety or contract design and management (CDM) documentation,
- failure to execute the contract under seal, and
- failure to provide a timely agreed final account.

3. As this has been the first audit review of the contractor's final account for Leighswood Children's Centre, there were no previously agreed actions to follow up.

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4. There are eighteen high priority actions, as follows

Section	Action Plan Ref.	Suggested Action
Selection of Contractors and Consultants	1	Managers should ensure consultants are selected in accordance with the current financial and contract rules.
	2	Managers should obtain appropriate authority prior to commencing procurement in accordance with the current rules and should include the council's procurement officers wherever the value is likely to exceed £50,000 as shown in financial and contract rule 10.1.1(e).
	3	Managers should ensure that tenders are accepted in accordance with the council's financial and contract rules, and this is evidenced in writing.
	4	Where managers act as a matter of urgency they should ensure their actions are reported to the appropriate body, currently the corporate management team (CMT)
	5	Managers should ensure contractors are appointed within tenders' validity periods.
Contract Documents	6	Managers should obtain evidence of contractors maintaining an appropriate level of insurance cover throughout the duration of contract works. Actions should accord with the requirements of financial and contract rule 14.4.1(b).
	7	Managers should ensure that tender specifications require a surety and this is obtained from the contractor before work is commenced on site. Actions should be in accordance with financial and contract rule 13.4.
	8	Managers should ensure that all firms provide evidence of their compliance with race relations and anti-discrimination legislation as required in financial and contract rule 14.4.1(e)
	9	The council should always hold the right to revoke a contract in cases of corruption to ensure its safety. Managers' actions should accord with the requirements of financial and contract rule 14.4.1(f).

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Section	Action Plan Ref.	Suggested Action
	10	Managers should ensure that all firms provide evidence of their compliance with current health and safety legislation as required in financial and contract rule 14.4.1(d)
	11	Managers should ensure that all projects conform to the current CDM regulations. Actions should comply with current legislation and with financial and contract rule 14.4.1(c).
	12	Managers should ensure that contracts are executed in accordance with requirements of current financial and contract rule 14.3.1.
Performance	13	Managers should ensure that the dates for commencement and completion of the works are established, documented and made available to all officers who may need to know them.
	16	Managers should ensure that practical completion is certified and certificates retained.
	17	Making Good of Defects certificates should be created, dated and signed at the end of the defects liability period providing all defects have been identified and corrected.
Final Account	18	Managers should ensure that contractors' final accounts are prepared and agreed in accordance with the times set out in the contract.
	19	Managers should ensure that certificates for payment are processed and paid within the time set in the contract both to avoid liability to interest payments and also to maintain a good working relationship with its contractors.
	20	Managers should ensure sufficient time is allowed for the auditor to examine the contractor's final account.

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C. Summary of Findings

	Full Assurance	Significant Assurance	Limited Assurance	No Assurance
Selection of Contractors and Consultants				✓
Contract Documents				✓
Performance			✓	
Final Account			✓	

D. Acknowledgements

1. Please thank the design and project manager for his help and co-operation during the audit, particularly for making records available to the auditor.
2. The auditor acknowledges that the works were planned and undertaken by officers who are no longer working for the council. The Design and Project Manager who has submitted this account for audit had no significant input into the processes employed.
3. On 15 April 2008, the auditor had provided the service manager with a detailed list of items required to enable examination of a contractor's final account. The auditor had also spent time with the officer responsible for the project. On 24 July, following his initial examination of the papers provided, the auditor had sent a detailed email to the service manager listing documents which had not been provided. The service manager provided a further file of documents to the auditor at a meeting on 31 July, assuring him that all details were now present.

## **AUDIT OPINION AND ACTION PLAN**

### **1. Selection of Contractors and Consultants**

#### **AUDIT OPINION**

**No assurance can be given that controls are in place to meet objectives in this area.**

Good practice includes:

- Tender registration forms have been used.
- Tenders were opened by a councillor in line with requirements of Contract Procedure Rules as in force at the time.

#### **ACTION PLAN**

Ref	Priority	Finding	Risk Exposure	Suggested Action	Responsibility & Timescale
1	***	The council appointed Allen Construction Consultancy upon its "negotiated rates". As the value of the proposed services was £45,000, tenders should have been obtained as required by Contract Procedure Rule 19.1 in force at that time.	The council cannot demonstrate it followed the requirements of its constitution or that it received the best value available.	Managers should ensure consultants are selected in accordance with the current financial and contract rules.	Immediate Head of Service

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Suggested Action</b>	<b>Responsibility &amp; Timescale</b>
2	***	There is no evidence of a Director approving that tenders should be sought as required in Contract Procedure Rule 19.3 as in force at the time of tender.	Officers fail to ensure appropriate managers are aware of the procurement, which may not accord with other of the Council's activities.	Managers should obtain appropriate authority prior to commencing procurement in accordance with the current rules and should include the council's procurement officers wherever the value is likely to exceed £50,000 as shown in financial and contract rule 10.1.1(e).	Immediate Head of Service
3	***	There is no evidence of the successful tender being accepted by the cabinet, as required in Contract Procedure Rule 25.3 as in force at that time.	Authority to make the award could be challenged.	Managers should ensure that tenders are accepted in accordance with the council's financial and contract rules, and this is evidenced in writing.	Immediate Head of Service



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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Suggested Action</b>	<b>Responsibility &amp; Timescale</b>
4	***	A letter to the Executive Director for Neighbourhood Services has been provided showing a request to waive contract procedure rules as a matter of urgency. There is no evidence that the rules were waived or that a report was made to the council's former executive management team, as required by Contract Procedure Rule 4 in place at that time.	There may be no authority for the acceptance of the tender, which would leave the council's action open to challenge.	Where managers act as a matter of urgency they should ensure their actions are reported to the appropriate body, currently the corporate management team (CMT)	Immediate Head of Service
5	***	Tenders were received in September 2005, but the contractor was not appointed until February 2006. This has resulted in a price increase of £7,109 because the tender was not accepted within the ninety day validity period.	Funds may be wasted on price increases rather than the project works where acceptance is delayed.	Managers should ensure contractors are appointed within tenders' validity periods.	Immediate Head of Service

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## 2. Contract Documents

### AUDIT OPINION

**No assurance can be given that controls are in place to meet objectives in this area.**

### ACTION PLAN

Ref	Priority	Finding	Risk Exposure	Suggested Action	Responsibility & Timescale
6	***	There is no evidence that the contractor has provided any insurance cover as required in Contract Procedure Rule 30.3 as in force at the time.	The council could have become liable for any damage or accident on the site should the contractor have been uninsured.	Managers should obtain evidence of contractors maintaining an appropriate level of insurance cover throughout the duration of contact works. Actions should accord with the requirements of financial and contract rule 14.4.1(b).	Immediate Head of Service
7	***	There is no evidence of the contractor providing either a surety or parent company guarantee as required by Contract Procedure Rule 20 then in force.	The council's assets may not be fully protected were the contractor to cease to trade or to abandon the works.	Managers should ensure that tender specifications require a surety and this is obtained from the contractor before work is commenced on site. Actions should be in accordance with financial and contract rule 13.4.	Immediate Head of Service

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Suggested Action</b>	<b>Responsibility &amp; Timescale</b>
8	***	There is no evidence of the contractor having completed a Race Relations Questionnaire as required by Contract Procedure Rule 30.6 as then in force	The council would be open to a high level of criticism should the contractor have acted in breach of equalities legislation.	Managers should ensure that all firms provide evidence of their compliance with race relations and anti-discrimination legislation as required in financial and contract rule 14.4.1(e)	Immediate Head of Service
9	***	There is no evidence of the contract including for the council to revoke it in cases of corruptions as required in Contract Procedure Rule 30.5 as in force at that time.	The council would have less effective remedy were the contractor to be involved in corrupt activity.	The council should always hold the right to revoke a contract in cases of corruption to ensure its safety. Managers' actions should accord with the requirements of financial and contract rule 14.4.1(f).	Immediate Head of Service
10	***	There is no evidence of the contractor having completed a Health and Safety questionnaire or of providing a copy of his Health and Safety policy as required by Contract Procedure Rule 30.2 as then in force.	The council would be open to a high level of criticism should the contractor have acted in breach of health and safety legislation.	Managers should ensure that all firms provide evidence of their compliance with current health and safety legislation as required in financial and contract rule 14.4.1(d)	Immediate Head of Service

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Suggested Action</b>	<b>Responsibility &amp; Timescale</b>
11	***	Although there is evidence of a contract design and management (CDM) supervisor being employed, there is no evidence of a safety plan as required in Contract Procedure Rule 30.4, or of a Form 10 having been completed.	The council would be open to a high level of criticism should the contractor have acted in breach of health and safety legislation.	Managers should ensure that all projects conform to the current CDM regulations. Actions should comply with current legislation and with financial and contract rule 14.4.1(c).	Immediate Head of Service
12	***	The auditor was presented with a contract document, which appears to have been assembled by the council's consultants. The council's officers appear to have failed to arrange for its sealing by either the contractor or the council. In effect, there may be no formal contract to protect the council in this project. This is contrary to requirements of Contract Procedure Rule 29.3 as in force at the time.	The council may be unable to rely upon the terms set out in the contract as this has not been executed.	Managers should ensure that contracts are executed in accordance with requirements of current financial and contract rule 14.3.1.	Immediate Head of Service

### 3. Performance

#### AUDIT OPINION

**A limited level of assurance can be given that controls are in place to meet objectives in this area.**

Good practice includes:

- Additional work and work to be omitted was covered by signed contract administrator's instructions.
- Site meetings took place and were documented.

#### ACTION PLAN

Ref	Priority	Finding	Risk Exposure	Suggested Action	Responsibility & Timescale
13	***	The auditor has been unable to determine the date upon which the contract works were commenced.	Absence of this date makes it impossible to determine whether the council has received the building at the time agreed in the contract.	Managers should ensure that the dates for commencement and completion of the works are established, documented and made available to all officers who may need to know them.	Immediate Head of Service

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Suggested Action</b>	<b>Responsibility &amp; Timescale</b>
14	**	The auditor has been provided with minutes of three site meetings. There is no record of the initial site meeting, and minutes of the subsequent meeting make it clear that some people failed to receive minutes of that initial meeting. Although further meetings were planned, no record has been found of these.	Without a complete file of site meetings, it is difficult for managers to prove that their officers have controlled the contract.	Officers should compile and maintain a complete file of minutes from site meetings.	Immediate Head of Service
15	**	Contract Instruction number twenty-three is for the supply of white goods to the value of £802.89 excluding VAT. These goods had been purchased by Leighswood School at a cost of £621.20. The school then invoiced the works contractor, who appears to have added their charge.	Inefficient procurement of items around the contract can lead to waste of money and expose the council's managers to criticism.	Items to be purchased as part of the contract should be obtained by the main contractor following his receipt of a formal instruction.	Immediate Head of Service

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Suggested Action</b>	<b>Responsibility &amp; Timescale</b>
16	***	The unexecuted contract document includes a completion date for the works. The auditor has received certificates to evidence neither the works achieving practical completion nor of an extension of time for their completion.	It is not possible to show that the works were completed to time. The council could be criticised for failing to ensure completion within the time set out in the contract.	Managers should ensure that practical completion is certified and certificates retained.	Immediate Head of Service
17	***	There is no evidence that the contractor has attended to and made good all defects within the liability period. No certificate of "Making Good" has been provided.	Failure to demonstrate making good of defects could call into question the council's control of the project.	Making Good of Defects certificates should be created, dated and signed at the end of the defects liability period providing all defects have been identified and corrected.	Immediate Head of Service

#### 4. Final Account

##### AUDIT OPINION

**A limited level of assurance can be given that controls are in place to meet objectives in this area.**

Good practice includes:

- A final account has been prepared by a quantity surveyor
- All payments are recorded and conform to valuations.

##### ACTION PLAN

Ref	Priority	Finding	Risk Exposure	Suggested Action	Responsibility & Timescale
18	***	The final account was agreed with the contractor on 27 April 2007: this is evidenced by both a date at the head of the document and by a manuscript signature. Contract Instructions numbers fourteen to twenty-four are dated 27 March 2008 and the bound final account is dated 23 April 2008.	Discrepancies between dates cast doubt upon the final account and the sequence of events which led up to its creation and may expose the council to criticism for its failure to complete payments to the contractor in accordance with the contract conditions.	Managers should ensure that contractors' final accounts are prepared and agreed in accordance with the times set out in the contract.	Immediate Head of Service



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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Suggested Action</b>	<b>Responsibility &amp; Timescale</b>
19	***	The most recent certificate for payment has a valuation date of 11 January 2008. The certificate was issued on 8 February 2008. Under clause 30.6.2 of the contract, the final certificate should be paid within twenty-eight days of its issue. This certificate is understood to have been paid in June 2008.	Where the council does not make payments in accordance with dates set out in a contract, it may become liable to interest.	Managers should ensure that certificates for payment are processed and paid within the time set in the contract both to avoid liability to interest payments and also to maintain a good working relationship with its contractors.	Immediate Head of Service
20	***	The contract does not appear to include the requirement for the final payment to be made only following audit of the contractor's final account. This requirement is found within Contract Procedure Rule 34.4 as current at the time.	Where time is not set aside within the contract conditions, it is not possible for the auditor to complete an examination in time for payments to be made in accordance with the contract conditions.	Managers should ensure sufficient time is allowed for the auditor to examine the contractor's final account.	Immediate Head of Service