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AUDIT COMMITTEE

Agenda Item

11 November 2004

THE AUDIT OF CONTRACTS

Ward(s) None

Portfolios: Cllr J O'Hare – Deputy leader of the council (finance & performance)

Summary of report:

The report provides information regarding the audit of contracts provided by the internal audit service.

Background papers: None

Reason for scrutiny:

The audit committee has a key role within the council's governance arrangements by ensuring that

- an effective internal control environment is maintained which includes ensuring internal audit reports are of good quality and recommendations are agreed and implemented; and
- financial and contract procedure rules are complied with in the day to day operations
 of the council.

This report shows how these requirements are implemented with regard to the council's capital and revenue contracts.

Recommendation:

1. To note the contents of the report.

Signed

Executive Director: Carole Evans

Date: 29 October 2004

Resource and legal considerations:

The cost of auditing contractors' final accounts and examination of managers' systems is fully charged to directorates based on audit activity. A charge is also made for advice provided to managers.

Citizen impact:

The work undertaken by internal audit is designed to ensure that effective systems of internal control are in operation. In particular, the audit of contracts is designed to ensure that Best Value is obtained by the council in its major procurements.

Environment impact:

None arising from this report.

Vision impact:

Internal audit's work contributes towards the council's vision in ensuring services operate in a sound control environment.

Equality Implications:

None arising from this report.

Consultation:

The proposed annual work programme is discussed with relevant senior managers prior to the start of the audit year. Work regarding the development of the council's financial and contract procedure rules is undertaken in close collaboration with the council's assistant director for legal services (the council's statutory monitoring officer).

Contact Officer

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1. THE AUDIT OF CONTRACTS

1.1 Audit committee requested further details about the audit of the council's contracts at its last meeting. This report describes the various activities undertaken regarding both contractors' final accounts and systems used to control major contracts.

1.2 The Audit Function

- 1.2.1 All internal audit work seeks to provide an independent and objective appraisal of the systems of internal control operated by the council's managers. Auditors examine, evaluate and report on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of the council's resources.
- 1.2.2 The contracts auditor seeks to provide managers with assurances regarding:
 - Compliance of the procedures used to let and administer contracts with the requirements of the council's contract procedure rules and European Union procurement directives,
 - Production and calculation of the contractor's final account to the council in accordance with the requirements of the contract, and
 - The safety of the systems employed by managers to control these activities,

1.3 Current Scope of Contracts

- 1.3.1 Contracts audit originally took place only for the council's major capital works contracts, which consisted almost entirely of construction, civil engineering and landscape works. Many of these related to the building and improvement of council dwellings and schools and the maintenance of roads and bridges. Following LSVT, the council no longer has a housing stock and it is believed that the last contractors' accounts for housing related works have been examined.
- 1.3.2 In addition, there are major revenue contracts for the supply of goods, materials, services or works. The council also undertakes revenue and capital projects funded though grants. In addition, the council has major partnerships for street lighting and education and acts as the accountable body for a number of its partner organisations with whom it provides services.

1.4 The audit process

1.4.1 Internal audit continues to examine the final accounts of major contracts over £60,000 prior to the final payment being made. During 2004/5 twelve major final accounts have been examined with a total value of £6,612,731.44. Numbers and values for the three previous financial years are shown below

Financial Year	Accounts Examined	Total Value
2001/02	29	£10,878,446
2002/03	22	£7,799,836
2003/04	28	£ 7,579,878

1.4.2 The report to managers has been developed to include findings and recommendations based upon the auditor's examination of the actions taken throughout the process from planning the project to the contractor's completion of

- snagging activities. An audit working paper, showing the items to be examined is attached at **Appendix 1**. This highlights the arithmetic accuracy of the final account and examines the systems used to control the contract to which that account refers.
- 1.4.3 Much of the auditor's work focuses on the system for tendering contracts. The requirement that managers obtain Best Value for the council is laid down in contract procedure rules, which form a part of the council's constitution. Some of the requirements of the regulations regarding obtaining quotations and tenders are shown below.

Contract Value	Procedure
Up to £2,000	Quotations not required but the Council's Financial Procedure Rules must be followed
£2,000 - £25,000	Obtain three quotations from firms on the appropriate section of the Council's Unified Standing List
£25,000 - £100,000 or for the supply of a period exceeding 3 months whose value is estimated to exceed £10,000 in any 1 month	Tenders from "a reasonable number of persons who supply" using Unified Standing List where applicable.
Over £100,000	Standing List, Special List or EU procedure following written agreement of the Director responsible for the service.

- 1.4.4 These rules apply to all contracts, whether funded from revenue or capital. As the focus of auditors' attention moves towards the systems employed to control contracts, an increasing number of revenue contracts are audited. The council's current contract with West Mercia Supplies for the supply of NAG photocopiers is a major capital and revenue contract providing for:
 - 87 photocopiers to be supplied with a capital cost of £209,333 leased by the council on a finance lease,
 - Quarterly rental payments amounting to £14,393,
 - New pricing mechanism bringing the cost of an A4 black and white copy down from around 2.7p to 0.65p per side, and
 - Introduction of new copiers which include scanners and printers, cutting the cost of replacing laser printers and providing for low cost printing plus scanning.
- 1.4.5 An examination of the contract was undertaken in 2003/04, which included recommendations to strengthen management controls. This has resulted in a database being created by the manager, allowing him to track usage and costs, and to highlight areas where further efficiencies could be made.
- 1.4.6 The audit plan for 2004/5 identifies firms to whom the council makes large payments. Contractual arrangements with these firms are to be examined, along with the means by which the performance of the contract is controlled. Details of the proposed examination are shown in **Appendix 2**.

1.5 Advice to Managers

- 1.5.1 The contracts auditor also provides advice to managers who are about to:
 - Request tenders or quotations for the supply of goods, services or works,
 - Deal with unforeseen circumstances during or following a tendering exercise, or
 - Create or strengthen systems for the control of contracts.
- 1.5.2 Spreadsheet models have been created to help managers evaluate tenders for both price and quality. A further model helps in tracking variations made to large contracts and payments made to the contractor.
- 1.5.3 The auditor liaises with legal officers as appropriate.

1.6 Other Responsibilities

- 1.6.1 Much of the audit advice is regarding the interpretation and implementation of the council's financial and contract procedure rules. The contracts auditor works with the assistant director for legal services to annually update these rules to deal with changes in:
 - The council's management structure,
 - · Legal requirements upon local authorities, and
 - Good practice in obtaining Best Value,
- 1.6.2 The financial procedure rules are currently being updated in accordance with the CIPFA good practice guide. Contract procedure rules have also been revised, based upon:
 - The council's known requirements,
 - CIPFA's "Standing Guide to the Commissioning of Local Authority Work & Services".
 - Other council's current procedure rules.

1.7 <u>Training</u>

1.7.1 The need for managers to understand and use the council's process for tendering, letting and operation of capital and revenue contracts has long been recognised. To promote compliance, the auditor has provided several training courses for managers. It is intended to provide further training to managers responsible for the tendering and letting of contracts following the introduction of new financial and contract procedure rules in the near future.

Appendix 1 - Audit Examination of Contractors' Final Accounts

Subject Area	Matters to be Examined
Contract Name	Ensure the name conforms with that found on the contract documents and with approvals
Contractor	Confirm name of contractor, especially where name has changed or novation has occurred.
Contract Type	Note whether Architect's (JCT), Engineers' (ICE) or other contract form is to be used. Ensure compliance with contract procedure rule 28.2
<u>Auditor</u> – Name / Extension	Details of the auditor – to be transferred onto the memo to the manager responsible
Audit Ref. 04/	Code reference for charging.
Release Memo Date	Date for release of memo
Service Area: Director Name Director for	Details regarding the manager and director responsible for the contract
WMBC Officer NameJob TitleExt	Name of the officer responsible for conduct of the contract
Service Area Ref.	Auditee's reference for memo
Supervising OfficerDesignationName	Officer named in the contract document as being responsible for the contact. This person will be the Contract Administrator, Architect or Engineer cited in the contract document as opposed to the officer with day-to-day control
 Consultant Name Date Appointed Value of Commission 	Where a consultant has been responsible for the contract, or for its tendering, ascertain that selection and appointment comply with contract procedure rule 14
Approval Committee/ Cabinet/ Director	Examine the authority for the project to go ahead and for tendering to take place. Ensure compliance with contract procedure rule 19.3
o Date o Note	Documentation should be available for the contract itself as well as for the finance.
Delegated AuthorityDelegated byNote	Obtain copy of capital financing report as required in contract procedure rule 7 and financial procedure rules.
o Date	Evidence with documents, particularly noting that the officer approving has authority at that level.
 Procurement Method of Procurement Note Check to Unified Standing List 	How has the contract been procured – Open tender by advertisement, Select List. Use of Standing List. Ensure compliance with CPRs 12, 13, 17, and 19.2 Evidence with documents

Subject Area	Matters to be Examined
 Tender Specification Design Specification Bills of Quantity Drawings Plans 	Check that a specification has been created to describe adequately the works or services south. Note the form and content and adequacy of this Evidence with documents – not drawings
 Schedule Invitation Documents Letter Date and Time Specified Envelope Supplied 	Note the date when invitations to tender were sent. This must post date the approval to proceed where CPR 19.3 is relevant. Note compliance with CPR 21 regarding details to be supplied to invitees. Evidence with documents
Tender Opening Opened by Date of Opening Opening Sheet Supplied Tender Attached Date of Tender	Ensure tenders have been returned and opened in accordance with CPR 22 Note where officers open tenders they should have no other involvement in the contract Ensure date of tender is not after the last date and time for receipt of tenders. Note any crossings out on tenders Evidence with documents
 Evaluation Evaluation Sheet Criteria other than price Cheapest Tender Accepted 	Evidence the fair evaluation of he tenders in accordance with CPR 24. Where possible obtain a copy of the evaluation sheet. Ensure that evaluation is in accordance with statements in tender documents. Evidence with documents
Acceptance of Tender	Ensure that tender acceptance process is in accordance with CPR 25 Note where more than one contractor's tender is accepted as required in CPR 27 Evidence with documents
Appointment	Ensure appointment of contractor is in accordance with CPR 26. Note where a letter of acceptance has been used and an order created for system use. Note any use of a Letter of Intent & specific reason for this. Note date of appointment which must be later than acceptance of tender Ensure compliance with CPR 26 Evidence with documents
 Insurance Certificate Certificates Presented Expiry Date Renewed if appropriate 	Ensure contractor has provided evidence of appropriate insurance, and ensure that covers the whole of the time he is on site – including extensions of time Ensure compliance with CPR 30 Evidence with documents

Subject Area	Matters to be Examined
Financial Bond	Note where a financial bond or other surety has been required. Note the bondsman's name, if in doubt check with legal. Ensure that bond has been released only after practical or substantial completion of works or end of service Ensure compliance with CPR 20 particularly where a surety has not been sought Evidence with documents
Race Relation Questionnaire	Race relations questionnaire must appear for every contract Ensure compliance with CPR 30 Evidence with documents
CDMApplicableSupervisorSafety Plan Examined	Note treatment of Contract Design Management regulations Ensure compliance with CPR 30 Evidence with documents
 Sealed Contract Document Examined Date of Execution 	(This document must not be taken apart for photocopying!) Examine contract to ensure it embodies all normal requirements Note the schedules to the contract and any dates and sums involved Ensure compliance with CPR 28, 29 and 30 Evidence with documents
Performance DatesCommencement DateCompletion Date	Note performance dates and whether these are the same in the contract as in the letter of appointment. Note from site meeting whether possession was delayed and any arrangements for rescheduling of completion date Evidence with documents
Site Meeting Minutes Examine Date of First Meeting Number of Other Meetings	Obtain notes from site meetings Note the attendance of representatives of appropriate seniority and the frequency of meetings. Note particularly any delays or substantial changes to the works or services Evidence with documents
 Variation Orders Type of Order Number of Orders Issued Orders are Priced Method of Pricing Orders Note on use and pricing Include on Spreadsheet 	Note all variation orders particularly that they are priced and the method of valuation. Variation orders should be dated within the contract period – not months afterwards! Apply the orders to the contract price in order to compare with the contractor's final account Ensure compliance with CPR 32 Create spreadsheet or use model Evidence with documents

Subject Area	Matters to be Examined
 COW / Verbal Instructions Number Issued Confirmed on Formal Instruction 	Where clerk of works' instructions or verbal arrangements have been made, these should have been incorporated into formal written variation orders Evidence with documents
 Extension of Time First Letter of Application Date of First Certificate Number of Applications Final Amended Completion Date With Profits Extension Include on Spreadsheet 	Ensure any extension of time results from an application from the contractor Contract clauses should be cited in applications for extensions Certificates should be issued before the date for completion Note whether extension is to be with or without profits Ensure compliance with CPR 28 and 30 Evidence with documents
Non Completion • Date of Certificate	Note issue of certificated of no n-completions where this is required under the contract form Note particularly the date of certificate Evidence with documents
 PC / Substantial Completion Completion Date Certificate Date Cert, Issued by 	Ensure date of completion as certified is not later than the agreed completion date or any extension Certificate should be dated on or shortly after the date of completion – not months later An officer of appropriate authority, normally the contract
	administrator, should sign the certificate Evidence with documents
Making Good of Defects Period Date Certified Issued By	Ensure that all de-snagging and making good activities have been undertaken. Certificate should not be dated before the end of the period set out in the contract document An officer of appropriate authority, normally the contract administrator, should sign the certificate Evidence with documents
 Rates and Quantities BOQ Rates Design Items PS and PC Items Contingency Sum Omitted Sample of rates checked to Tender Document 	Examine rates & quantities used in provision of works or services. Note carefully the conformity to contract requirements Ensure that a similar value is used when a quantity is removed as when it is added! Evidence with documents (Do not do this for the sake of it!)

Subject Area	Matters to be Examined
Contractor's final account • Date of Account	Examine the final account. It should have been created by the contractor - NOT by the contract administrator.
Agreed with EmployerSpreadsheet Created	Ensure agreements or significant changes to the contract have been agreed in writing and form part of the account.
Contractor's Account Value	Check the account's calculations and check its total against that found by applying the variations.
Post Audit ValueSaving to Council	Note that remeasures will be certified by a quantity surveyor or similarly qualified person
	Note preliminary items and ensure they have actually been expended where the contract requires this
	Ensure the account is created at an appropriate date
	Ensure compliance with CPR 34
	Evidence with documents
Interim Valuations Number Issued	Ensure payments have been made in accordance with contract terms; many contract forms do not require invoices
PeriodMinimum Sum	Ensure valuations were made at appropriate times and form reasonable estimates of work undertaken at the time.
Valuation agreed by	Ensure proper treatment of materials on site and items not on site whose title is vested in the employer
	Note particularly financial year-end considerations
	Total all valuations
	Ensure compliance with CPR 31
	Evidence with documents
Payments Made	Ensure total of payments made is less than the final account
Total	Calculate value of payment remaining due to the contractor
Remaining to pay	Evidence with documents
Other payments made Include as a Memo Item	Rarely, there may be payments to other parts of an organisation or to other persons.
 Payments pertain to 	Ensure the payments are in accordance with contract terms
	Evidence with documents
 Contractors Claims Claims only in final account 	Ensure all claims by the contractor are within contract terms Where claims refer to insurance matters check with insurance officer
 Value Other claims made 	If there is a possible dispute, ensure that legal services officers are alerted as soon as possible
Legal officer advice sought	Ensure compliance with CPR 35
soughtInsurance claims resolved	Evidence with documents
Note	

Subject Area	Matters to be Examined
<u>Liquidated Damages</u>Value stated in contract	Calculate the value of any liquidated damages which should be reclaimed from the contractor
Per period of TimeNo of periods delayed	Note any extensions of time and avoid any 'tit for tat' agreements
Value to be chargedCorrect VAT treatmentOther Damages claimed	Ensure VAT is charged on the whole contract sum and that liquidated damages are removed outside the VAT calculation
	Ensure compliance with CPR33
	Evidence with documents
Contractor Liquidation	Very unusual. Where a novation has taken place this must be fully documented and agreed with the council's legal officers

Appendix 2 Detailed Proposals for Audit of Major contractors

Control Objective	Expected Control
General Responsibilities To ensure that the manager responsible for the revenue contract complies with CPR 6 and provides a robust system for the regulation of contracts	Create and maintain adequate systems to ensure proper control and monitoring of expenditure upon all goods, materials, services and works obtained under these Contract Procedure Rules Examine written procedure notes governing control of contracts
Procurement - Authority to Purchase To ensure that procurement takes place following appropriate authority in accordance with financial and contract procedure rules	Managers check orders for need, budget and tender/quotation FPR 8.1 Evidence of an approved budget. Appropriate Director's authority prior to tendering for contracts over £100,000 CPR 19.3 Evidence of authority to procure
Budgetary Provision. To ensure that adequate budgets exist to cover expenditure on major revenue contracts. OR To ensure that capital projects are found in the capital programmed and properly authorised	FPR 8.1 plus FPR 3.2 "Expenditure is committed only against an approved budget head;" Budget manual and current year's budget held by manager and including the procurement
Procurement Method To ensure that the appropriate method of procurement has been undertaken	Use of central contracting arrangements including the BCPC agreements where appropriate. CPR 8 Compliance with EC procedures where contract is anticipated to exceed threshold. Evidence of EC tendering exercise Use of Standing List or Special List where appropriate Obtain copies of documents produced when selecting contractors

Control Objective	Expected Control
Tendering Procedure To ensure that tendering procedures comply with CPRs and provides a fair competition.	Appropriate and robust procedures are maintained and documented. Examine procedure notes for tendering Appropriate tender documents were provided to tenderers in compliance with CPR 21. Examine tender pack provided. Tenders have been returned to appropriate officer Evidence of tender return TRF has been completed and only tenders returned on time and without mark opened TRF and tender envelopes examined. Appropriate custodians and tender openers Examine TRF
Evaluation and Acceptance of Tender To ensure compliance with CPRs along with proper evaluation and acceptance	Evaluation undertaken by appropriate officers using pre-arranged criteria. Examine evaluation documents Appropriate treatment of errors, changes and interviews Evidence from evaluation report Formal acceptance in accordance with CPR 25 Evidence of tender acceptance including appropriate signature of Cabinet minute.
Contractor Accreditation To ensure that contractors have provided appropriate assurances and indemnities to the Council in accordance with CPRs, particularly CPR 30, for the council's safety.	Contractors have provided details of Health and Safety, and Race Relations policies Examine documentation from contractors Contractors have provided sureties except where inapplicable or Director agreement is has been obtained. Examine contractor's documents 'Revocation in case of corruption' has been obtained Examine contractor's documents Contractor has appropriate insurance cover throughout the contract's duration. Examine Contractor's Insurance Policies as deposited
Letter of Appointment To ensure that contractors are appointed in accordance with CPRs and in a way that provides certainty of appointment and terms.	Letters of appointment have been used wherever tenders have been obtained Letters show appointment – not intent to appoint Examine letter of appointment Official Order is not provided to contractor –
	'dummy' only where necessary. Examine official orders

Control Objective	Expected Control
	Letters sent to each contractor state that more than one firm is being used to undertake works or services Examine letter to contractors Letters' terms are unambiguous and show that formal contract will be required Examine letter to contractors
Contract Making - Form of Contract	Appropriate details are sent to legal officers
To ensure appropriate contracts are made to protect the council and to comply with CPRs	after letter of appointment is confirmed. Examine letters to legal services Council's form of contract is used except where legal requirements dictate otherwise Draft form of contract to be examined along with any amendments made by contractor All contracts are entered into a register of contracts maintained by the General or Service Manager Examine register of contracts
Contract Documentation To ensure that contracts are made under seal and made available to officers in accordance with CPRs and to offer appropriate protection to the council.	Contracts made under hand or seal as required by CPRs and made available to general or service managers responsible for their operation. Examine contract documentation held in Service Area and in central filing
Use of Call-off and variation documents Ensure that all variations to contracts are priced and in compliance with CPR 32	All variations are recorded in writing, agreed and priced. Examine any variations including letters All call-off documents or orders state clearly they pertain to the contract Examine documents used for calling off work under any schedule of rates or similar contract.
Conduct and Monitoring Method of Payment To ensure that payment is made in accordance with the contract terms and CPRs, and that appropriate safety is provided to the council.	Appropriate and robust procedures are maintained and documented. Evidence of written procedure notes for agreeing payments to contractor.

Control Objective	Expected Control
Certification of goods/services received and payments required To ensure that payments for goods and services are made only in accordance with FPR 8.2 and following appropriate checks	Payment is only made against invoices and valuations which relate to work carried out under the contract Examination of invoice and completion of certification stamp by appropriate officers Prices charged and quality provided are in accordance with the terms of the contract Examine contract prices and terms against invoices CREDITOR of ORACLE manuals available and used Examine written procedure notes to officers.
Duration and possible extension of contract period To ensure that contracts are only extended in accordance with CPRs and that terms are not changed to the council's detriment.	Contract document clearly shows the length of time for which the contract will be in force Contract document to be examined Any extension has been approved in writing Extension of period documentation Prices and terms have only been altered in accordance with the contract Examination of contract
Monitoring exercises undertaken To ensure expenditure is monitored in accordance with FPR 3.2 and CPR 6(b) and to protect the council's revenue expenditure	Proper records and accounts are maintained and available to a named budget holder Budget holder's documentation Spending remains within the limit of the budget Compare spend to budget Procedures are in place to ensure proper control and monitoring of expenditure Examine procedure notes
Reporting ORACLE reports created and distributed To ensure that financial information is received and evaluated by budget holders in accordance with FPR 3.2	Financial reports relating to the major contracts should be received on a regular basis and examined by managers Examine LAFIS / ORACLE reports to see they include details of major contracts relating to the Service Area
Presentation of out-turn to managers To ensure that appropriate senior managers are made aware of the out-turn on major contacts in accordance with FPRs and with the need for any overspend to be reported.	Reports are made to the Executive on the service's projected expenditure and income compared with its budget, in consultation with the Chief Finance Officer; Details of general / service manager's report to Director.