

## **Audit Committee – 28 April 2009**

### **Submission of Internal Audit Reports For Scrutiny**

#### **Summary of report:**

This report presents the two reports selected for scrutiny at the Audit Committee meeting on the 2 March 2009.

#### **Background papers:**

Internal audit reports/files/working papers.

#### **Recommendation:**

1. To note the contents of the report.



**Steph Simcox – Head of Finance on behalf of  
James Walsh – Assistant Director - Finance (CFO)  
15 April 2009**

#### **Resource and legal considerations:**

The cost of providing internal audit is charged to services based on audit activity. These projects were included within the annual risk assessed audit programme discussed with managers before the start of the respective financial year.

#### **Citizen impact:**

Report scrutiny assists in demonstrating that the council and its officers are protected and provides an assurance to stakeholders about the security of the council's operations.

#### **Performance and risk management issues:**

Many Audit Committee activities are an important and integral part of the council's performance/risk management and corporate governance frameworks. In selecting specific reports for detailed scrutiny the committee is able to ensure that operational and control issues are being dealt with appropriately and that managers' agreed actions are being implemented. The committee may seek explanation from managers failing to progress agreed actions.

## Equality Implications:

None arising from this report

## Consultation:

The annual audit work programme was discussed with relevant senior managers before the start of the year. Following completion of each audit review, the auditee's agreement to implement the agreed actions was sought before issuing the final report. Shortly afterwards, the relevant manager was asked to formally confirm that the agreed actions had been implemented.

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## SUMMARY OF REPORTS SELECTED FOR SCRUTINY

### Darlaston Sure Start (Ilmington House) & Stroud Avenue Children's Centre

Audit reviews of the contractors' final accounts for Darlaston Sure Start (Ilmington House) and Stroud Avenue Children's Centre were undertaken during August and November 2008 respectively as part of the annual audit plan. The examinations were 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.'

The objectives of both audit reviews 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.

The conclusions detailed within the final report for **Darlaston Sure Start (Ilmington House) (Appendix 1)** were that:

*Internal audit is able to give a limited assurance opinion on the system of internal control operating within the contractor's final account for these works. Some good practices were noted during the audit, including those in relation to reporting to cabinet, a capital finance report having been prepared, a surety being obtained, a contract under*

*seal being in place and a quantity surveyor final account being produced and agreed by the contractor.*

*Areas for improvement were identified and included no evidence of competition for the architect's commission, despite this being in excess of £50,000; no evidence of a formal acceptance of the tender; delays in appointing the contractor leading to additional money being paid to him; making good of defects took place some seventeen months after practical completion and the final account was presented for audit review over a year after its agreement with the contractor.*

Eleven actions were agreed as part of the review including 8 at high priority.

The conclusions detailed within the final report for **Stroud Avenue Children's Centre (Appendix 2)** were that:

*Internal audit is able to give a no assurance opinion on the system of internal control operating within the contractor's final account for these works. Some good practices were noted during the audit, including those in relation to using a tender registration form, a formal quantity surveyor report on the tenders, insurance health and safety and equalities documents being available and extension of time documents and a quantity surveyor final account being prepared.*

*Areas for improvement were identified and included no authority both to procure and to accept the tender, no evidence of how firms were selected to tender or of CDM requirements being followed, absence of a surety, no contract under the council's seal, missing and delayed architect's instructions, a large value of additional work being undertaken and failure to provide a timely agreed final account.*

Seventeen actions were agreed as part of the review including 15 at high priority.

In discussing with the head of property services the issues raised within these and other recent final account reports, he advises that arrangements are much improved and all agreed actions are now fully taken into account in awarding work to contractors and monitoring contracts' progress.'

Walsall Council  
Internal Audit Service

**Final Account for  
Darlaston Sure Start (Ilmington House)**

Audit Report 2008 / 2009

August 2008

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**AUDIT OPINION & ACTION PLAN**

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## **EXECUTIVE SUMMARY**

### **A. Introduction**

1. An audit review of the contractor's final account for Darlaston Sure Start (Ilmington House) 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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Darlaston Sure Start (Ilmington House)  
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**B. Overall Audit Opinion**

1. Internal audit is able to give a limited assurance opinion on the system of internal control operating within the contractor's final account for Darlaston Sure Start (Ilmington House) 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, [could result / have resulted] in failure to achieve the organisation's objectives in the areas reviewed.

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

- Cabinet received a report prior to the project's commencement and delegated acceptance of tender to the appropriate officer.
- A capital finance report was compiled and approved
- A tender registration form was used.
- A formal tender evaluation report was received.
- A surety was obtained.
- A contract has been made under the council's seal.
- Additional work and work to be omitted was covered by signed architect's instructions .
- The final account was agreed with the contractor.
- The quantity surveyor has produced a detailed final account.

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

- There is no evidence of competition for the architect's commission, despite this being in excess of £50,000.
- There is no evidence of a formal acceptance of the tender.
- Delays in appointing the contractor led to additional money being paid to him.
- Making good of defects took place some seventeen months after practical completion.
- The final account was presented to the Chief Internal Auditor over a year after its agreement with the contractor.

3. As this has been the first audit review of the contractor's final account for Darlaston Sure Start (Ilmington House), there were no previously agreed actions to follow up.

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Darlaston Sure Start (Ilmington House)  
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4. There are eight 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.
	3	Officers should ensure that tenders are accepted in accordance with the council's financial and contract rules, and this is evidenced in writing.
	4	Managers should use appropriate project planning and control techniques to ensure money is not wasted by late acceptance of tenders.
Contract Documents	5	Managers should ensure the council complies with CDM regulations as required by law and in financial and contract rule 14.4.1(c)
Performance	7	Managers should ensure making good of defects is certified at the appropriate time unless there is good reason for the architect to do otherwise.
Final Account	8	Managers should hold copies of all prime documents to evidence payments made to the contractor.
	10	Contractors' final accounts should be made available to the Chief Internal Auditor as soon as practicable to prevent undue delay in final payment.
	11	Managers should control contracts so as to allow time for contractors' final accounts to be examined by the Chief Internal Auditor as required in financial and contract rule 15.1.1(c).

C. Summary of Findings

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

*Walsall Council - Internal Audit  
Darlaston Sure Start (Ilmington House)  
Audit Report 2008 - 2009*

**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. The auditor has provided the Service Manager with a detailed list showing the items needed in order to review a contractor's final account. Despite this, many items were missing and items which had not been requested were included.
4. Particular concern has been expressed about the progress of this project, some of whose significant milestones are detailed in the table below, This has caused considerable additional expense.

<b>Milestone</b>	<b>Date</b>
Tenders Received	13 May 2005
Contractor Appointed	17 November 2005
Contract Executed	10 November 2006
Practical Completion	4 December 2006
Making Good of Defects	16 May 2008
Contractor's Final Account Agreed	6 February 2007
Contractor's Final Account Presented to Chief Internal Auditor	28 July 2008



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Darlaston Sure Start (Ilmington House)  
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## **AUDIT OPINION AND ACTION PLAN**

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

#### **AUDIT OPINION**

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

Good practice includes:

- Cabinet received a report prior to the project's commencement and delegated acceptance of tender to the appropriate officer.
- A capital finance report was compiled and approved
- A tender registration form was used.
- A formal tender evaluation report was received.

#### **ACTION PLAN**

Ref	Priority	Finding	Risk Exposure	Suggested Action	Responsibility & Timescale
1	***	The council has entered into a contract with Baart Harries Newhall valued at £52,253. There is no evidence of how this firm was procured, of any contractual agreement or indemnity as required by Contract Procedure Rule 14 as in force at the time of their procurement.	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 how the list of firms from whom tenders were sought was compiled or of a Director having any input into that list. Contract Procedure Rules 12 and 13, as in force at the time of tender, required firms to be selected from the council's unified standing list or that a special list should be created.	The council cannot demonstrate that its choice of firms from whom to seek tenders is demonstrably fair.	Managers should ensure firms from whom tenders are to be sought are selected in accordance with financial and contract rule 11.	Immediate Head of Service
3	***	There is no evidence of the successful tender being accepted either by the cabinet or by its delegate as required in Contract Procedure Rule 25.3 as in force at that time.	Authority to make the award could be challenged.	Officers 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	***	The tender was increased by £23,778.00 as a result of the council's late acceptance of the contractor's tender.	The project's budget is put at risk when the contractor's appointment is delayed.	Managers should use appropriate project planning and control techniques to ensure money is not wasted by late acceptance of tenders.	Immediate Head of Service

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## 2. Contract Documents

### AUDIT OPINION

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

Good practice includes:

- The contractor's insurance is documented.
- Appropriate race relations documentation was obtained
- A contract has been made under the council's seal.
- A surety was obtained.
- Evidence of Health and Safety forms was provided.

### ACTION PLAN

Ref	Priority	Finding	Risk Exposure	Suggested Action	Responsibility & Timescale
5	***	The auditor has not been shown evidence that the council and contractor complied with contract design and management (CDM) legislation. This is required by Contract Procedure Rule 30.4 as in force at that time.	The council and contractor could be criminally liable for breaches of CDM regulations.	Managers should ensure the council complies with CDM regulations as required by law and in financial and contract rule 14.4.1(c)	Immediate Head of Service

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### 3. Performance

#### AUDIT OPINION

**A significant 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 architect's instructions.
- The extension of time for completion of the works and a revised date for their completion were certified by the architect
- Site meetings took place and were documented.

#### ACTION PLAN

Ref	Priority	Finding	Risk Exposure	Suggested Action	Responsibility & Timescale
6	**	The auditor has not been shown details of the pre-start meeting between the employer, the contractor and the other members of the team. There are no details of any site meetings taking place after 26 October 2006, although the works did not achieve practical completion until 6 December 2006.	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

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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>
7	***	Making good of defects was not certified until May 2008, some seventeen months after the project's achieving practical completion. No good reason is shown for this delay	Delaying certification of making good of defects without good reason may contravene requirement in the contract document and may delay payment otherwise due to the contractor.	Managers should ensure making good of defects is certified at the appropriate time unless there is good reason for the architect to do otherwise.	Immediate Head of Service

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#### 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:

- The final account was agreed with the contractor.
- The quantity surveyor has produced a detailed final account.

##### ACTION PLAN

Ref	Priority	Finding	Risk Exposure	Suggested Action	Responsibility & Timescale
8	***	Interim certificates authorising payments to the contractor have not been shown to the auditor, who has relied upon a ledger held by the council's consolidated creditors section.	It is not possible to prove from prime documents the value of payments made to the contractor or the sum remaining owing to him.	Managers should hold copies of all prime documents to evidence payments made to the contractor.	Immediate Head of Service
9	**	The final account does not include evidence to support the award of £9,775.37 to the contractor as an "Assessment of Preliminaries costs & loss & expense incurred due to Extension of Time."	It is not possible to demonstrate this payment is in accordance with the terms of the contract.	The value of all awards for extension of time should be evidenced from the contract conditions and prime documents.	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>
10	***	The final account was presented to the auditor in July 2008, over seventeen months after its agreement with the contractor.	Final payment to the contractor may be unnecessarily delayed.	Contractors' final accounts should be made available to the Chief Internal Auditor as soon as practicable to prevent undue delay in final payment.	Immediate Head of Service
11	***	There is no provision in the contract for the final account to be examined by the council's Chief Internal Auditor prior to the making of the final payment. This is a requirement of Contract Procedure Rule 34.4 as in force at the time.	The Chief Internal Auditor is placed under undue pressure to undertake a quick examination of the contract and the contractor's final account	Managers should control contracts so as to allow time for contractors' final accounts to be examined by the Chief Internal Auditor as required in financial and contract rule 15.1.1(c).	Immediate Head of Service



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Internal Audit Service

**Final Account for  
Stroud Avenue Children's Centre**

Audit Report 2008 - 2009

December 2008

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## **EXECUTIVE SUMMARY**

### **A Introduction**

- 1 An audit review of the contractor's final account for Stroud Avenue Children's Centre was undertaken during November 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 executive and assistant directors 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.

**B Overall Audit Opinion**

- 1 Internal audit is able to give a no assurance opinion on the system of internal control operating within the contractor's final account for Stroud Avenue 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.
→	<b>No assurance</b>	<b>No assurance as weaknesses in control, or consistent non compliance with key controls, [could result / have resulted] in failure to achieve the organisation's objectives in the areas reviewed.</b>

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

- the use of a tender registration form,
- a formal report on tenders was received from the quantity surveyor,
- inclusion of insurance, health and safety and equalities documents,
- documentation of the extension of time for the contractor to complete the works, and
- preparation of the final account by the quantity surveyor.

A large number of areas for improvement have been identified, in particular;

- need to obtain authority both to procure and to accept the tender,
- no evidence of the means by which firms were selected to tender,
- failure to evidence CDM requirements being followed,
- absence of a surety,
- failure to execute the contract under the council's seal,
- a number of architect's instructions were missing
- an architect's instruction was written over two years after works were complete,
- a large value of additional work has been undertaken, 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 Stroud Avenue Children's Centre, there were no previously agreed actions to follow up. Managers should note that many weaknesses highlighted in this report are similar to those found by the auditor in his reviews of previous final accounts.

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4 There are fifteen high priority actions, as follows

Section	Action Plan Ref	Agreed Action
Selection of Contractors and Consultants	1	Managers will ensure consultants are selected in accordance with the current financial and contract rules.
	2	Managers will always 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).
	4	Managers will ensure that tender instructions follow the requirements of financial and contract rule 13.5.2 as now in force.
	5	Managers will ensure all tenders are accepted as set out in financial and contract rule 13.9.
Contract Documents	7	Managers will ensure that contractors obtain a performance bond or other surety as required by financial and contract rule 13.4.
	8	Managers will ensure the council complies with CDM regulations as required by law and by financial and contract rule 14.4.1(c).
	9	The council will always hold the right to revoke a contract in cases of corruption to ensure its safety. This is required in financial and contract rule 14.4.1(f)
	10	Managers will ensure that contracts are executed in accordance with requirements of current financial and contract rules, and should inform the council's Monitoring Officer where difficulties persist. They should ensure they comply with financial and contract rule 14.3.
Performance	11	Managers will maintain a file of Architect's Instructions as part of their control of the project and to enable the auditor to demonstrate that payments for additional work have been properly certified.
	12	Managers will ensure all contracts are controlled by appropriately qualified and experienced officers and that the requirements of financial and contract rule 15.2 are followed.

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Section	Action Plan Ref	Agreed Action
	13	All Architect's Instructions will be written at or shortly after the time contractor is asked to add items to or omit them from the works.
	14	Managers will ensure defects are rectified and issue certificates at the appropriate time.
Final Account	15	Contractors' final accounts will be completed at the appropriate time and made available to the Chief Internal Auditor as soon as practicable to prevent undue delay in final payment.
	16	Managers will present all valuations to the Chief Internal Auditor to enable the value of payments remaining to the contractor to be demonstrated.
	17	Contracts will be carefully controlled to ensure the correct amount of money is paid to the contractor at the appropriate time.

**C**     Summary of Findings

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

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**D     Chronology of Significant Events**

- 1     Particular concern has been expressed about the progress of this project. Important events for this contract took place on the dates shown below:

Event	Date
Authority to Seek Tenders	None Provided
Tenders Invited	21 October 2004
Tenders Opened	19 November 2004
Tender Accepted	30 November 2004
Contractor Appointed	1 December 2004
Contract Signed or Sealed by Walsall Council	No Sealed Contract
Pre-Start Meeting	14 December 2004
Works Commencement	24 January 2005
Last Variation or Instruction Issued	25 April 2008
Date for Completion of Works	31 October 2005
Extended Date for Completion of Works	3 February 2006
Practical / Substantial Completion	3 February 2006
Making Good Defects	No Certificate
Final Account Issued	1 September 2008
Final Account Presented to Audit	2 November 2008

**E     Acknowledgements**

- 1     Please thank the council's quantity surveyor and project manager for their help and co-operation during the audit, particularly for making records and certificates available to the auditor.
- 2     The auditor acknowledges that officers involved in the planning and supervising of this project are no longer working for the council.
- 3     The auditor has provided the Service Manager with a detailed list showing the items needed in order to review a contractor's final account. Despite this, many items were missing and items which had not been requested were included.
- 4     The final account total has been reached by the issuing of Architect's Instruction No 39, dated over two years after the works achieved practical completion. The auditor has relied upon the quantity surveyor's valuation of the account, including the figures provided in the last architect's instruction.
- 5     The works exceeded the contract sum by £86,463.22, 12.1 per cent. The auditor understands that much of this results from delays and difficulties caused by Harron Homes. The council has made a claim against this firm, which was developing a nearby site. A number of items have been noted in the quantity surveyor's final accounts which do not result from these delays. The auditor is concerned that variations have been made during the building phase at the client's request. This practice creates two serious risks:
  - The cost of varying a contract during the construction phase exceeds that of making the same changes at the design stage, and
  - Additional items are not exposed to competition, but are subject to agreement between the council and its contractor.

Wherever possible, the client's requirements should be designed into the building. The client should then be informed that the agreed design is "sealed" and cannot be modified. This will promote fewer variations and a closer compliance with the contract sum.

## **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:

- A tender registration form was used
- A formal evaluation report was received.
- 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	Agreed Actions	Responsibility & Timescale
1	***	The council appointed Hawley Associates as Quantity Surveyor for this contract. There is no evidence of quotations or tenders being sought as required by Contract Procedure Rules 18 or 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 will ensure consultants are selected in accordance with the current financial and contract rules.	Head of Property Services Immediately



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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Agreed Actions</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 will always 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).	Head of Property Services Immediately
3	**	There is no evidence of how the list of firms from whom tenders were sought was compiled or of a Director having any input into that list. Contract Procedure Rules 12 and 13, as in force at the time of tender, required firms to be selected from the council's unified standing list or from a special list.	The council cannot demonstrate that its choice of firms from whom to seek tenders is demonstrably fair.	Managers will ensure firms from whom tenders are to be sought are selected in accordance with financial and contract rule 11.	Head of Property Services Immediately

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Agreed Actions</b>	<b>Responsibility &amp; Timescale</b>
4	***	Firms invited to tender were not informed that any tenders received after the closing date, or bearing any mark identifying their sender, would be ineligible to be opened. This is contrary to the requirements of contract procedure rule 22 as in force at that time.	Had any tenders been received late or identified their sender, it may have been necessary to admit them.	Managers will ensure that tender instructions follow the requirements of financial and contract rule 13.5.2 as now in force.	Head of Property Services Immediately
5	***	David Bovell (Residential Services Manager) appears to be the only person who has accepted Niken's tender of £714,800.00. Contract procedure rule 25.3, as in force at the time, required that cabinet should resolve to accept tenders whose value exceeded £250,000.	Officers' actions could be considered outside the law where they consistently fail to follow requirements of the council's constitution.	Managers will ensure all tenders are accepted as set out in financial and contract rule 13.9.	Head of Property Services Immediately

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Agreed Actions</b>	<b>Responsibility &amp; Timescale</b>
6	**	The letter of appointment, signed by the architect on behalf of the "Interim Head of Asset Management", gives the start and finish dates for the works as "to be agreed".	The letter of appointment leaves dates for the works' performance open to question. This could have weakened the council's position were the contractor to have delayed commencement.	Managers will ensure letters of appointment provide certainty about dates for commencing and completing works projects and that the letter's signatory has authority to bind the council.	Head of Property Services Immediately

## 2. Contract Documents

### AUDIT OPINION

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

Good practice includes:

- The contractor completed health and safety, and equalities documents.
- Insurance cover was maintained throughout the project.

### ACTION PLAN

Ref	Priority	Finding	Risk Exposure	Agreed Actions	Responsibility & Timescale
7	***	The contractor obtained a quotation for a surety and informed the employer that he would raise a bond. There is no evidence that a performance bond has been executed or is held by the Council. Contract procedure rule 20, as in force at the time, required the council to hold a surety against the contractor's satisfactory performance of the works.	The council would have lost money were the contractor to have ceased trading or abandoned the works.	Managers will ensure that contractors obtain a performance bond or other surety as required by financial and contract rule 13.4.	Head of Property Services Immediately

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Agreed Actions</b>	<b>Responsibility &amp; Timescale</b>
8	***	The auditor has not been shown evidence that the council and contractor complied with contract design and management (CDM) legislation. Compliance is required by statute law and was required by Contract Procedure Rule 30.4 as in force at that time.	The council and contractor would be criminally liable for any breach of CDM regulations.	Managers will ensure the council complies with CDM regulations as required by law and by financial and contract rule 14.4.1(c).	Head of Property Services Immediately
9	***	There is no evidence of the contract including for the council to revoke it in cases of corruption 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 will always hold the right to revoke a contract in cases of corruption to ensure its safety. This is required in financial and contract rule 14.4.1(f)	Head of Property Services Immediately
10	***	There is no contract document executed by the council as required in Contract Procedure Rule 29.3 as in force at this time for contracts of this value.	The council may be unable to rely upon the terms set out in the contract as this has not been executed.	Managers will ensure that contracts are executed in accordance with requirements of current financial and contract rules, and should inform the council's Monitoring Officer where difficulties persist. They should ensure they comply with financial and contract rule 14.3.	Head of Property Services Immediately

### 3 Performance

#### AUDIT OPINION

**No 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 architect's instructions.
- The contractor applied for an extension of the time for the works' completion, and the architect certified his agreement to this.
- Site meetings took place and were documented.

#### ACTION PLAN

Ref	Priority	Finding	Risk Exposure	Agreed Actions	Responsibility & Timescale
11	***	Architect's Instructions numbers 8, 14, 17 and 24 were not provided to the auditor.	The auditor cannot confirm that all variations, omissions and additions have been required and valued by the Architect or accurately reflected in the contractor's final account.	Managers will maintain a file of Architect's Instructions as part of their control of the project and to enable the auditor to demonstrate that payments for additional work have been properly certified.	Head of Property Services Immediately

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Agreed Actions</b>	<b>Responsibility &amp; Timescale</b>
12	***	<p>The architect's instructions resulted in a net increase of £132,646.38 to the cost of the works. Examples included:</p> <p>£8,036.00 for desks, £4,375.45 for external planting, £12,193.28 for screen and retaining walls, and £5,462.75 for additional decoration,</p> <p>Although some additional costs were beyond the architect's control, a number of items appear to have been added during the construction phase.</p> <p>There appears to have been no approval from a Director to these substantial additions despite the requirement of contract procedure rule 32.5 as then in force.</p>	<p>The architect leaves himself open to the suggestion that he has failed to control the works.</p> <p>The contractor is able to price additional works without his prices being subjected to competition.</p>	<p>Managers will ensure all contracts are controlled by appropriately qualified and experienced officers and that the requirements of financial and contract rule 15.2 are followed.</p>	<p>Head of Property Services</p> <p>Immediately</p>

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Agreed Actions</b>	<b>Responsibility &amp; Timescale</b>
13	***	The final Architect's instruction, number 39, was written on 25 April 2008, over two years after the project achieved practical completion.	Using Architect's Instructions to accept events that have taken place some way in the past may be considered a lack of control and prompt further claims from the contractor.	All Architect's Instructions will be written at or shortly after the time contractor is asked to add items to or omit them from the works.	Head of Property Services Immediately
14	***	The Architect certified that the works had achieved Practical Completion on 3 February 2006. Although the defects maintenance period is believed to be twelve months, no Making Good of Defects certificate has been supplied.	Officers may be unable to demonstrate that the contractor has completed his liabilities to make good defects to the works.	Managers will ensure defects are rectified and issue certificates at the appropriate time.	Head of Property Services Immediately



#### 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:

- The final account was prepared by the Quantity Surveyor

##### ACTION PLAN

Ref	Priority	Finding	Risk Exposure	Agreed Actions	Responsibility & Timescale
15	***	The final account was produced in September 2008, over two years after the project achieved practical completion.	Payment to the contractor may be unnecessarily delayed.	Contractors' final accounts will be completed at the appropriate time and made available to the Chief Internal Auditor as soon as practicable to prevent undue delay in final payment.	Head of Property Services Immediately
16	***	The quantity surveyor's valuations Numbers 5 to 8 have not been included in the papers presented to the Chief Internal Auditor.	Failure to provide full information to the auditor prevents him from proving the final account's value.	Managers will present all valuations to the Chief Internal Auditor to enable the value of payments remaining to the contractor to be demonstrated.	Head of Property Services Immediately

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<b>ACTION PLAN</b>					
<b>Ref</b>	<b>Priority</b>	<b>Finding</b>	<b>Risk Exposure</b>	<b>Agreed Actions</b>	<b>Responsibility &amp; Timescale</b>
17	***	Since practical completion was certified on 3 February 2006, the council has held over 5% of the value certified by the quantity surveyor. Under JCT contracts' requirements only 2.5% of the should be retained once Practical Completion has been certified.	Contractors could claim interest upon amounts which the council has failed to pay at the appropriate time.	Contracts will be carefully controlled to ensure the correct amount of money is paid to the contractor at the appropriate time.	Head of Property Services Immediately