INTERNAL AUDIT REPORT

FROM:	Audit and Risk Manager	**SUBJECT:**	Management of Contracts
TO:	Head of Finance	**DATE:**	24 July 2020
C.C.	Chief Executive		
	Deputy Chief Executive (AJ)		
	Senior Procurement Business Partner		
	Portfolio Holder (Cllr Hales)		

1 Introduction

1.1 In accordance with the Audit Plan for 2020/21, an examination of the above subject area has recently been completed by Jemma Butler, Internal Auditor, and this report presents the findings and conclusions for information and action where appropriate.

1.2 Wherever possible, findings have been discussed with the staff involved in the procedures examined and their views are incorporated, where appropriate, into the report. My thanks are extended to all concerned for the help and cooperation received during the audit.

1.3 The audit was undertaken during the COVID-19 pandemic. This has meant a slightly different approach has been taken to complete the audit. Rather than observing staff members and meeting staff face to face, correspondence has been via email or telephone calls.

2 Background

2.1 Warwick District Council spent almost £39 million in 2018/19 on procured goods and services. It is important that the Authority manages its contracts effectively to ensure both value for money and that the desired outcomes, in line with the Fit for the Future strategy, are achieved.

2.2 For the purpose of this audit the term "contract management" covers three main areas: commissioning, sourcing and contract management. The Procurement Team support contract managers through the sourcing stage and provide guidance for the commissioning and management stages.

2.3 Contract managers are expected to abide by various procurement legislation without being procurement experts. They are able to do this by following the guidance and procedures produced by the Procurement Team.

2.4 Contract management of individual contracts is usually covered when the service that manages the contract is audited. The aim of this audit is to review the processes and guidance in place across the Council rather than focus on specific areas. This more strategic approach will review the procurement process as a whole, ensuring processes and guides are in place encouraging contract managers to get value for money on each and every contract, whilst ensuring procurement rules are not breached.

2.5 A contract is 'an agreement between two (or more) parties intended to be enforceable by law'. The legally binding aspect is the main difference between it being a 'contract' as opposed to just being an informal social 'agreement'. However, a social 'agreement' between two commercial organisations, will always be a 'contract'. This is because legally it is an implied term in this relationship is that both parties have entered into legal relations, unless it is made an expressed term of the contract that it won't be legally binding.

3 **Scope and Objectives of the Audit**

3.1 The audit was undertaken to test the management and financial controls in place.

3.2 In terms of scope, the audit covered the following areas:
- Contract award
- Contract provision and monitoring
- Staff training and guidance
- Document management

3.3 The audit programme identified the expected controls. The control objectives examined were:
- The contract is awarded to the most appropriate company following an appropriate tendering exercise.
- Staff are aware of what the Council aims to achieve in relation to the services that are being provided.
- Contractors are aware of the services to be provided.
- Works are undertaken to agreed standards.
- Spending with existing contractors is managed.
- New spending follows procurement practices in place.
- Spending and contracts awarded are legal and are in line with procurement practices.
- KPIs are considered at award stage and included within the contracts to allow monitoring.
- Staff effectively manage and monitor contracts
- Contracts and associated documentation can be located with.
- Loss of ICT does not result in loss of electronic copies of contract documentation.

4   **Findings**

4.1   **Recommendations from Previous Report**

4.1.1   This is the first specific audit of this topic and, as such, there are no previous recommendations to follow up.

4.2   **Contract Award**

4.2.1   For each contract awarded, the formal tendering processes followed should be documented with files being saved within the appropriate procurement folder on the network. The documents retained depend on the route of procurement taken but can include: the specifications, tender process, evaluation documents and formal awards.

4.2.2   A review of recently-awarded contracts recorded on the contract register was carried out. Where applicable, signed agreements had been saved in the correct procurement folder (i.e. in the appropriate year and under the correct procurement type) along with the relevant associated documents.

4.2.3   The review also confirmed that the tendering processes had been carried out by appropriate staff members, i.e. the contract manager or their line manager, for each sampled contract.

4.2.4   A review of 33 new tenders undertaken between 1 September 2019 and 1 April 2020 was carried out using the information on the contract register. Fifteen of the 33 tenders had electronic copies of the agreement linked to the register. Eleven of the electronic copies had been signed and ten included performance measures to allow ongoing monitoring of the agreements.

   Risk

   There may be a risk of contracts or agreements being invalid or unenforceable due to them not being signed.

   Recommendation

   Before business commences with suppliers, all contractual documents must be signed.

4.2.5   Of the remaining tenders, only five 'hard-copy' contracts could be found in the Document Store. All five included appropriate performance measures and four of these had been signed by both parties.

   Risk

   It may be difficult to monitor suppliers' performance and/or manage any issues or concerns with suppliers if performance measures have not been included in the contract or agreement.

Recommendation

Performance measures should be included in the contract documentation.

4.2.6 Where contracts could not be found it was identified that many had started in February 2020, so it is likely that these contracts have not made it to the Document Store due to the COVID-19 lockdown. Five of the other contracts where documentation could not be located had ended within the last few months.

4.2.7 It is the responsibility of the nominated contract manager to ensure the document is stored securely and, where possible, an electronic copy should also be saved on the system so that other staff can access the contract documentation in the contract manager's absence.

Risk

There may be a risk of contracts going missing or being inaccessible if they have not been stored securely and correctly.

Recommendation

The requirement to store contracts securely and correctly should be reinforced.

4.3 **Contract Provision and Monitoring**

4.3.1 The current Procurement Strategy in place runs from 2019 until 2023. The Strategy defines the meaning of procurement and sets out expectations of managers: managers are required to observe procurement rules, regulations and guidance within the framework.

4.3.2 The Strategy also sets expectations for the monitoring of procurement key performance indicators (KPIs) and progress against action plans with bi-annual reporting.

4.3.3 Customer satisfaction surveys are encouraged across the Council. These are obtained through feedback surveys, consultations and questionnaires. Feedback received is used to shape and develop existing and future services.

4.3.4 A "contact us" option available on the Council's webpage gives customers the opportunity to complain or compliment services or work. Social media sites are also monitored to identify issues as they arise. This allows contract managers the opportunity to pick up on issues raised by customers and address these with the relevant contractors.

4.3.5 Training provided by the Procurement Team advises contract managers to meet regularly with the contractors to ensure contracts are running to plan. The method statements and measures or KPIs included in the

tender documentation and signed agreement should provide the contract managers a baseline to work from.

4.3.6   Guidance available on the intranet and provided in the training encourages staff to take minutes of meetings with contractors so they can be used to support performance reporting. Meeting minutes have not been checked as part of this audit as they are included as part of service area audits. Staff are encouraged to raise and document any substandard work with contractors at early stages.

4.4   **Staff Training and Guidance**

4.4.1   There is a large amount of information and guidance available to staff on the intranet. The main bulk of information and guidance is broken down into three sections: Guides, Forms, and Templates and Lists. Within the three sections there is further division to help the user narrow down their search quickly, they are: Procurement, Procurement Processes, Tender and Contract.

4.4.2   There is a procurement flowchart which helps staff to determine the procurement route to take if the staff member is unsure. The first question on the flow chart asks if the service is already being provided by a supplier. This could be a good place to signpost the user to the contract register as newer staff members may not know where to find it or how to find out if there is already a supplier in place. However, with the contract register being on the main intranet page and on the procurement page as big buttons, it should be easily locatable.

4.4.3   Contract managers are tasked with ensuring the details of the contract are added to the contract register and they are also responsible for keeping the record up to date. A review of the details stored on the contract register was carried out which confirmed that the contract managers listed are all current members of staff. It was also noted that there were some spelling errors or abbreviations within contractors' details which could make it difficult to find contracts when using the search function. There are also a number of entries with incomplete data, including twelve with no start, end or review dates entered.

Advisory

The contract managers should ensure that they input the correct information on the contract register so that it matches the details on the contract or agreement.

4.4.4   Legislation requires the Council to publish a list of all expenditure over £250 on a monthly basis. This is made available publically on the Council's website. A review was undertaken on a sample of payments selected from the February and March 2020 applications to see if there was a contract in place and what the contractual spend amount was.

4.4.5   Contracts were found to be in place for all of the sampled payments although one 'zero-value' contract related to services where the

contractor makes payments to the Council as opposed to the 'chargeable' services which the Council had used them for without going through a procurement process.

4.4.6   The total expenditure with each relevant supplier (for the 2019/20 financial year) was reviewed. This identified that expenditure with the supplier with the 'zero-value' contract was in excess of the procurement limit of £10,000 and expenditure with three other suppliers was found to be over the value of the contract (one by more than £12,000 and the other two in excess of £100,000).

4.4.7   The expenditure with these companies covers orders placed by multiple service areas. As there is no system in place to monitor total expenditure, there is little chance of these irregularities being picked up. Individual contract owners may be monitoring their own spend against the contract but could be unaware of the orders placed by other services. This also shows that staff may need further training or guidance to help them to understand that procurement legislation applies across the Council rather than just within their service area team.

Risks

1. **There may be a breach of procurement laws due to high levels of expenditure with suppliers where no contract is in place.**
2. **There may be a risk of frequent overspending on contracts if the total spend across the Council is not being reviewed when purchasing goods or services.**
3. **There may be a risk of staff not understanding their role when purchasing and not appreciating their responsibility to check cumulative spend or the existence of current contracts.**

Recommendation

1. **Before authorising expenditure there should be checks in place to ensure the Council is not at risk of breaching procurement laws and legislation.**
2. **Before authorising expenditure, checks should be carried out to ensure spending is within contracted spend and relevant to the contract held.**
3. **Staff should receive purchasing training before being given access to the purchasing system. This should include a basic checklist so that staff can review whether there is or should be a contract in place and a review of the cumulative spend.**

4.4.8   Staff are encouraged to include KPIs within contract agreements as aids to monitor the contract. There are guides within the procurement pages to help staff identify relevant KPIs to include in the contract and how to implement them within the agreement. The guidance highlights the importance of KPIs within contracts. Procurement training provided also reinforces the use of KPIs.

4.4.9   Mandatory training is provided to all staff. Initially provided as separate sessions, 'procurement awareness training', which is mandatory, and 'contract management training' have now been merged together as one. 70 staff members have attended training within the last year. Members are also invited to procurement training sessions but it was established that take-up is low.

4.5   Document Management

4.5.1   There are three stages of a contract lifecycle: commissioning, sourcing and contract management. The Procurement Team are involved actively in the sourcing stage and provide guidance for the other stages.

4.5.2   The documentation lifecycle follows the same stages. The Procurement Team ensure documentation is completed and saved within the appropriate folder at the sourcing stage, for which they provide support and advice.

4.5.3   For the commissioning and contract management stages, the contract manager has responsibility for ensuring the relevant documentation is stored appropriately, from the date it is signed and active. This includes scanning and saving an electronic copy of the contract and ensuring it is taken to the Corporate Support Team (CST) to be stored within the Document Store.

4.5.4   Access to the Document Store is only possible with supervision and assistance from CST. CST manage and edit a spreadsheet of all of the contracts and documentation held within the Document Store. Any documentation removed from the Document Store must be logged on to a log sheet, with the log sheets being stored where the contract has been removed from. There is no digital copy of the log sheet maintained and no follow-up is undertaken to ensure that the documents are returned.

Risk

There may be a risk of contracts going missing or staff forgetting that they have the document in their possession.

Recommendation

There should be a 'rental' time imposed to help ensure that documents are returned in a timely manner to the Document Store.

4.5.5   To prevent the loss of documents through ICT failure, backups are carried out frequently. For the documentation held on WDC servers there are daily, weekly and monthly backups performed. These range from incremental to full backups. Backups are saved to disk and held at two separate physical locations, one of which is off site, to protect them from damage or loss at Riverside House.

5   **Summary & Conclusion**

5.1   Following our review, we are able to give a SUBSTANTIAL degree of
        assurance that the systems and controls that are currently in place in
        respect of Management of Contracts are appropriate and are working
        effectively.

5.2   The assurance bands are shown below:

Level of Assurance	Definition
Substantial Assurance	There is a sound system of control in place and compliance with the key controls.
Moderate Assurance	Whilst the system of control is broadly satisfactory, some controls are weak or non-existent and there is non-compliance with several controls.
Limited Assurance	The system of control is generally weak and there is non-compliance with controls that do exist.

5.3   There were, however, issues identified during the course of the audit
        relating to:

        • Unsigned/unenforceable contracts
        • Lack of KPI's to enable performance monitoring of contracts and
          agreements
        • Incorrectly stored contracts
        • Breach of procurement laws
        • Overspend on contracts
        • Lack of staff understanding when purchasing
        • Deed store logs

5.4   An advisory was identified relating to incorrect entries on the contract
        register.

6   **Management Action**

6.1   The recommendation above is reproduced in the attached Action Plan
        (Appendix A) for management attention.

Richard Barr
Audit and Risk Manager

Action Plan

Internal Audit of Management of Contracts – July 2020

Report Ref.	Recommendation	Risk	Risk Rating*	Responsible Officer(s)	Management Response	Target Date
4.2.4	Before business commences with suppliers all contractual documents must be signed.	There may be a risk of contracts or agreements being invalid or unenforceable due to them not being signed.	Medium	SMT/Heads of Service	A reminder will be issued for the next Procurement Board (SPBP).	5/8/2020
4.2.5	Performance measures should be included in the contract documentation.	It may be difficult to monitor suppliers' performance and/or manage any issues or concerns with suppliers if performance measures have not been included in the contract or agreement.	Low	Senior Procurement Business Partner	The climate change report includes a recommendation that there should be a corporate set of processes and performance monitoring documents for contract managers so that everyone is working in the same way, creating a consistent approach.	31/3/2021
4.2.7	The requirement to store contracts securely and correctly should be reinforced.	There may be a risk of contracts going missing or being inaccessible if they have not been stored securely and correctly.	Low	SMT/Heads of Service	A reminder will be issued for the next Procurement Board (SPBP).	5/8/2020

Report Ref.	Recommendation	Risk	Risk Rating*	Responsible Officer(s)	Management Response	Target Date
4.4.7	1. Before authorising expenditure there should be checks in place to ensure the Council is not at risk of breaching procurement laws and legislation.	1. There may be a breach of procurement laws due to high levels of expenditure with suppliers where no contract is in place.	Medium	SMT/Heads of Service	This will be considered at the next Procurement Board to ensure practices are in place within each Service Area, and Procurement are sought for advice if in doubt.	5/8/2020
	2. Before authorising expenditure, checks should be carried out to ensure spending is within contracted spend and relevant to the contract held.	2. There may be a risk of frequent overspending on contracts if the total spend across the Council is not being reviewed when purchasing goods or services.	Medium	SMT/Heads of Service	Procurement Board to be reminded to ensure contract managers monitor spend against their contracts. Potential contract overspend has been included within the specification requirements for the new FMS, due to be progressed by end of financial year.	31/3/2021

Report Ref.	Recommendation	Risk	Risk Rating*	Responsible Officer(s)	Management Response	Target Date
	3. Staff should receive purchasing training before being given access to the purchasing system. This should include a basic checklist so that staff can review whether there is or should be a contract in place and a review of the cumulative spend.	3. There may be a risk of staff not understanding their role when purchasing and not appreciating their responsibility to check cumulative spend or the existence of current contracts.	Low	Head of Finance	Training is provided on the use of the FMS (Total) before officers can raise and authorise purchase orders. Officers will be reminded (Procurement Board) to ensure there is or should be a contract in place and to review of the cumulative spend, and to seek support from Finance to assist to monitor spend. Training on the new Financial Management System will ensure these points are covered.	5/8/2020
4.5.4	There should be a 'rental' time imposed to help ensure that documents are returned in a timely manner to the Document Store.	There may be a risk of contracts going missing or staff forgetting that they have the document in their possession.	Low	Democratic Services Manager	Due to the current pandemic the majority of staff are working from home. Because of this obtaining documents from the deed store is restricted and, therefore, forms a control in itself. Future processes to be agreed and put in place by the Democratic Services Manager.	End of December 2020

* Risk Ratings are defined as follows:

High Risk: Issue of significant importance requiring urgent attention.
Medium Risk   Issue of moderate importance requiring prompt attention.
Low Risk   Issue of minor importance requiring attention.