

# MALDON DISTRICT COUNCIL

INTERNAL AUDIT REPORT

PROCUREMENT AND CONTRACT MANAGEMENT NOVEMBER 2019- FINAL

| LEVEL OF ASSURANCE |                           |  |  |
|--------------------|---------------------------|--|--|
| Design             | Operational Effectiveness |  |  |
| Moderate           | Limited                   |  |  |



| EXECUTIVE SUMMARY                | 2    |
|----------------------------------|------|
| DETAILED FINDINGS                | 6    |
| STAFF INTERVIEWED                | 21   |
| APPENDIX I - DEFINITIONS         | . 22 |
| APPENDIX II - TERMS OF REFERENCE | . 23 |

## DISTRIBUTION

Name Job Title

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## REPORT STATUS LIST

Auditors: Marina Karystinou

Dates work performed: 15 May - 26 June 2019

Draft report issued: July 2019

Final report issued: 6 November 2019

### **EXECUTIVE SUMMARY** LEVEL OF ASSURANCE: (SEE APPENDIX I FOR DEFINITIONS) Design Generally a sound system of internal control designed to achieve Moderate system objectives with some exceptions. Non-compliance with key procedures and controls places the Effectiveness Limited system objectives at risk. SUMMARY OF RECOMMENDATIONS: (SEE APPENDIX I)

High

Medium

Low

### TOTAL NUMBER OF RECOMMENDATIONS: 6

### CRR/BAF REFERENCE:

CRR 15 - Failure to plan and deliver balanced budgets over the medium term.

### **BACKGROUND:**

The achievement of many aspects of the Council's purpose and vision relies on effective procurement and contract management, alongside the management of relationships with key partners. All Local Authorities are required to demonstrate sound financial administration supporting protection of the public purse, and work to rules governing how the Council will conduct procurement and ensure fair and transparent competition in the award of contracts.

This includes competitive tendering for contracts with a total value in excess of £25k and additional requirements to follow the Public Contracts Regulations 2015 where the value of the contract exceeds the EU threshold (which is currently £181,302 for Services and Supply contracts and £4,551,413 for Works contracts). These regulations also help to ensure the Council achieves value for money in procurement. Sound procurement and contract management practices enable the Council to gain ongoing assurance that contracts continue to meet their aims and support Council objectives, along with timely information on potential contract issues which facilitate early resolution.

For the purpose of this audit, we picked a sample of contracts and reviewed the evidence available to confirm whether the procurement process was followed as per the Council's Contract Procedure Rules and that roles and responsibilities for procurement and contract management are clearly assigned.

In addition we determined if a contract register was available, with comprehensive and up to date data. We interviewed the contract managers for our sample contracts to ascertain the contract management process, including monitoring of contract requirements and KPIs (where applicable),

contact performance, payments in accordance with agreed terms and variations and the reporting of performance and issues.

The following contracts were tested for confirming the procurement process was followed:

- 1. Ticket Rolls for Car Parking Machine
- 2. CCTV Maintenance Agreement
- 3. Integrated income / Cash Receipting System & E-Payments Solutions Software Maintenance
- 4. Treasury Management Consultancy Services
- 5. Street Cleansing
- 6. Idox Uniform Application Suite
- 7. Waste and Recycling Contract
- 8. Dengie 100 Sports Centre and Blackwater Leisure Centre (contract is with "Places for People")

The sample was then extended by one:

9. Verge Mowing Contract

As it proved difficult to recover the procurement documents and the contract agreements for some of the initial eight sampled (see detailed findings for more information), we extended the initial sample by one with a 2018 start date on the register, to identify whether it was easier to retrieve more recent documents. However, it later transpired the extended sample's actual start date was 2013 and we were not able to retrieve the procurement-related documents for this contract either.

Contracts one to four were small value (below the EU threshold of £181k) and contracts five to nine were large value contracts (above the £181k EU threshold).

### GOOD PRACTICE:

From our testing, we identified the following areas of good practice:

- 1. The procurement team is well-established in the Council and all the contract managers we interviewed were aware of their role. The team is able to offer guidance and advice when tendering contracts, to help with renegotiation of existing contracts and offer support where there are issues with contract performance.
- 2. Maldon are a member of the PAE (Procurement Alliance Essex) and of the Essex Procurement Hub. This allows the procurement team members to participate in meetings where knowledge is shared and to receive training, allowing them to stay up to date and benefit from a pool of knowledge and experience.
- 3. All contracts have an assigned contract manager. The managers we interviewed were aware of their responsibility to maintain a good relationship with the partners and have contact as necessary to deal with any issues.
- 4. The high value contracts we tested that had specified KPIs or contract requirements were monitored closely by the contract managers.
- 5. All payments for the contracts we tested matched the agreed charges or, where that was not the case, variations were based on agreed terms in the contract. Managers were aware of the need to check invoices, and check variations against agreements to ensure they were valid.

### **KEY FINDINGS:**

- 1. Contract documentation is not saved in one centralised location. As a result, evidence was not always available regarding the procurement process, due diligence checks, the contract agreements or contract management documents. The procurement process was not followed for two out of the nine sampled and one contract was for a year but has not been retendered since 2013. Due diligence checks are only performed where the central procurement team are involved and the contract is considered high value. (finding 1 high)
- 2. Whereas roles and responsibilities for procurement and contract management have been clearly assigned, the Council's procedure does not state the cases where the procurement team should be involved (any contracts with total value above £25k). Contract managers have not received training and they were not aware of some of their responsibilities in relation to involvement and engagement with the procurement team and contract monitoring and reporting requirements (finding 2- medium)
- 3. The contract register is not always updated accurately and some fields are not completed consistently (finding 3-medium)
- 4. Monitoring and reporting is not consistent with the Council's procedure, both for small and large value contracts (finding 4- medium)
- 5. The Council has not established a formal method for embedding knowledge from data and lessons learned to ensure knowledge of procurement and contract management is shared and embedded (finding 5 low)

### **CONCLUSION:**

Overall, the Council has an established procurement team, with effective procurement controls in place, however there is less assurance that the approved procurement process is followed when the procurement team are not involved.

In order to minimise the control weaknesses risk in the procurement process, the Council procurement policy should clearly set out the procurement team involvement responsibilities. Contract managers have been assigned for all contracts and there is monitoring of varying levels for six out of the eight contracts tested. We found managers were not always aware of their responsibilities as detailed in the Council's procedure, particularly regarding monitoring and reporting. Managers followed their predecessor's processes rather than the Council procedures. Further, we found there was a lack of training and available guidance for contract managers. The Council does not centrally store contract related documents, therefore documents were not easily accessible to staff to ensure continuity post staff changes. As a result we have concluded a moderate level of assurance for the design and limited level of assurance for the effectiveness of the controls; raising one high, three medium and two low level recommendations. Our work was based on historic contracts and we acknowledge that improvements have recently been made which should result in more effective controls in future.

### Management commentary:

It should be noted and acknowledged that the Council is currently going through a significant amount of change whereby there will be a whole new organisational structure from 1 November 2019 with new roles and responsibilities. Inevitably, there will be a period of settling in of the new structure and the new ways of working.

Thus, it should be accepted that the recommendations, whilst agreed by Management cannot be implemented as quickly as would under normal circumstances in the absence of such whole organisation change. Expectations on the implementation of the recommendations must take this into account and allow for the time.

### **DETAILED FINDINGS**

RISK: PROCUREMENT ACTIVITY IS NOT COMPLIANT WITH THE CONTRACT PROCEDURE RULES AND PROCUREMENT CODE OF PRACTICE AND DUE DILIGENCE SUCH AS FINANCIAL CHECKS IS NOT UNDERTAKEN ON POTENTIAL CONTRACTORS TO ENSURE THAT THE CONTRACTOR IS FIT FOR PURPOSE.

Ref

Significance

Finding: In three cases the procurement process was not followed (one relates to an exemption). There is a lack of due diligence checks performed before and during a contract. Contract documentation is not always available, including procurement documents and contracts.

1

High

We tested a sample of nine contracts from the contract register to confirm whether the procurement process had been followed as per the Council procedure documents and whether any exemptions were approved as required. In addition we requested evidence of due diligence performed on the tendering companies.

We identified the following exceptions:

- 1. The procurement process was not followed in three cases:
- The Verge Mowing Contract (annual value £26.5k) was procured in 2013 for one year with the possibility of a three year extension. However, we noted the procurement process did not take place after the end of the four year period. It appears that the contract has been continued with no retendering. The procurement team was not involved in the process and we were unable to contact the contract manager to ascertain the process followed.
- The policy states that for all exemptions, an exemption form is required to be completed stating the reasons; it should be approved by the Officer, the Director of Resources and a Council member. For one sample where an exemption was applied (Integrated income/Cash Receipting System & E-Payments Solutions software maintenance) we were unable to obtain evidence to confirm the relevant exemption form was submitted and approved.

We note the Council maintain an internal record of exemptions, however the contract we sampled was not included on the record.

Not following the approved procurement process increases the risk of value for money not being achieved and the government's legal framework not being adhered to. This can lead to poor decision making and increased costs for the Council.

2. There was no evidence of due diligence performed at the tendering process, during the contract period or at the renewal stage: The contract procedure rules state:

"Officers are responsible for ensuring that all Candidates for Relevant Contract are suitably assessed. The assessment process shall establish that the potential Candidates have sound: Economic and financial standing; Technical ability and capacity to fulfil the requirements of the authority".

None of the contract managers we interviewed were performing financial checks before or during the contract. Regarding the technical ability and capacity checks, contract managers we interviewed said that most of these contracts have been supplied by the same company for years, so the quality is known.

We discussed the above due diligence requirements with the procurement team; they confirmed that they do quality checks for contracts they are involved in. Contract that have a project team involved (procurement, finance and legal staff) will have financial checks performed. However, there are no evidence of further checks done during a contract.

The lack of financial and quality checks increase the risk of goods or services procured falling short of the Council's quality requirements or suppliers not being financially viable. This can lead to interruption of services provided by the Council, reduced customer satisfaction, reputational damage and financial loss.

# 3. For four contracts we could not find the procurement documentation:

From our testing and interviews, we identified that the documents relating to the procurement and management of each contract are not always accessible. This is because they are not saved in a central location. As contract managers and procurement staff change, it becomes more difficult to track down the documents for older contracts.

The CCTV Maintenance contract was procured in 2010 and the Ticket Rolls for Car Parking Machine in 2014. The current contract manager took over in 2016 and procurement was not involved in the process; as a result we were unable to obtain and review the procurement documentation.

Two of our samples, related to renewal of a contract with an existing supplier; ICT services (IDOX application suite and Integrated income / Cash Receipting System & E-Payments Solutions software maintenance) procurement documentation was unable to be obtained and reviewed as the original contracts were procured many years ago but the current contract manager was assigned responsibility very recently, in 2019.

The lack of complete and comprehensive files for every contract increases the risk of inadequate procurement documentation being available for audit trail. The lack of complete records may lead to increased expenditure/ errors or fraud not being identified.

### **RECOMMENDATION & MANAGEMENT RESPONSE:**

- 1. The procurement team should be involved in the process for all contracts with a total value of £25k or above and should have an overview of the process for all other contracts. Ensure all operational staff involve the procurement team in the tendering of contracts, or inform them of their actions to increase assurance of the approved process being followed.
- Reminder for all staff to involve Procurement in all processes for over £25k by Team Talk inclusion, also to include in Freshserve as an article/reminder (Paula Jarvis, September 2019)
- Online Quotations register, to be set up & reviewed by Procurement regularly to ensure rules are adhered to (Holly Sanders, December 2019)
- Monitor Contract Register to ensure all contracts due for renewal have Procurement involvement (Holly Sanders, September 2019)
- 2. Review the reasons for the Verge Mowing contract not having a re-tender/ procurement exercise carried out in 2017 and determine whether the appropriate process was followed.
- Investigate and report on reasons for non-adherence to the Procurement rules and provide action plan to ensure compliance in future. (Paula Jarvis, December 2019)
- 3. Ensure an internal list of all exemptions is maintained and updated. It should detail all the relevant information for exemptions applied, to provide an accurate and summary overview of all exemptions.
- Create formal spreadsheet to log exemptions and link to contracts register. Copy of exemption to be saved in contract folder (Paula Jarvis & Holly Sanders, commence September 2019, complete March 200)
- 4. Clarify in the policy and procedure who has the responsibility for financial and quality checks at the procurement stage and during the contract. Evidence of the checks should be saved in the contract file. Ensure that contract managers are aware of their due diligence responsibilities (please refer to **recommendation 2** on training for contract managers).
- Make clear in Policy & Procedure at time of update for Brexit (Paula Jarvis, commence October 2019, complete March 2020)
- Evidence to be saved in contract folder at time of tender by Procurement and by Contract Manager during life of Contract (Paula Jarvis & Contract Manager, commence September 2019)
- Contract Manager training in 3 sessions (ALL Contract Managers) (Paula Jarvis, March 2020)
- 5. Ensure all contract documents are saved in a central location, including procurement documents, contract agreements and contract management records. Contract managers and the procurement team should be aware of the location and the need to keep the file up to date
- New contracts all saved in central location. Complete
- Contract documentation to be held on Procurement drive (Paula Jarvis & Contract Managers, March 2020)

RISK: ROLES AND RESPONSIBILITIES FOR PROCUREMENT AND CONTRACT MANAGEMENT ACROSS THE COUNCIL ARE NOT CLEARLY ASSIGNED AND/OR ARE NOT BEING EXECUTED AT SENIOR LEADERSHIP LEVEL OR WITHIN OPERATIONAL MANAGEMENT

Ref

Significance

Finding: The policy does not clearly state when procurement of a contract should happen with the involvement of the Procurement team. Contract managers have not received procurement and contract management training.

2

Medium

The procurement team is well-established in the Council. The four contract managers we interviewed felt well supported and they were aware of the role of the procurement team and the support they could offer at the procurement and renewal stages, or if there were issues with a contract's performance. This enhances the assurance that the correct procurement process has been followed.

However, we identified the following issues:

 The procedure does not state that contracts with total value >£25k should be advertised via the procurement team.

From our discussions with the Senior Procurement Consultant; contracts with a total value above £25k, require the procurement team to be involved in the process. However, this is not stated in the procedure. During our testing, we identified three cases where the correct procurement process had not been followed (please refer to finding 1).

For contracts where the procurement team are not involved, there is less assurance that the correct procurement process is followed.

2. Three out of the four managers stated that they would like to receive training on the procurement and contract management processes.

Up to date training would increase the likelihood of consistent process application and provide managers with confidence in performing their contract management duties.

As noted earlier we identified that contract managers were not always aware of their responsibilities, for example the need to regularly update the contract register or perform due diligence checks on prospective and existing suppliers (please refer to finding 1). They were also not aware of the monitoring and reporting requirements detailed in the Council's procedure (please refer to finding 4). These items should be specifically included in the training offering.

The Senior Procurement Consultant informed us that she offers training to employees but it has not been possible to do so in Maldon due to time pressures.

The lack of training on procurement and contract management, increases the risk that staff are not aware of their duties as contract managers and these are not performed consistently across the Council. This can lead to a lack of/ineffective actions and increased expenditure for the council.

### **RECOMMENDATION & MANAGEMENT RESPONSE:**

- 1. Update the policy to include the need for operational staff to involve the procurement team in all procurement processes for contracts with a total value >£25,000 and for the procurement team to have an overview of all other tenders (please refer to recommendation 1.1)
- Make clear in Policy & Procedure at time of update for Brexit (Paula Jarvis, commence October 2019, complete March 2020)
- 2. Ensure all contract managers receive training on the procurement and contract management procedures at regular intervals.
- Contract Manager training (ALL Contract Managers) (Paula Jarvis, March 2020 & every 1 year)
- 3. Develop contract management guidance or identify external sources and make available to contract managers.
- Create Procurement / Contract Management "How To" guide (Paula Jarvis, December 2019)

RISK: A CONTRACTS REGISTER IS NOT HELD, IS INCOMPLETE OR OUT OF DATE, AND MONITORING/MANAGEMENT OF CONTRACTS IS INEFFECTIVE RESULTING IN A FAILURE OF CONTRACTS TO DELIVER AGAINST KPI'S, KEY CONTRACT PROVISIONS NOT BEING COMPLIED WITH AND EFFECTIVE RELATIONSHIPS NOT MAINTAINED WITH KEY PARTNERS.

Ref

Significance

Finding: The contract register is not updated and completed accurately and consistently. The responsibility for maintaining and updating the register is not clear.

3

Medium We

reviewed the contract register to confirm it was completed consistently and accurately. We also compared the information recorded to the documents received for our sample testing.

We identified the following issues:

### 1. Responsibility for updating the register is not clear:

The Senior Procurement Consultant informed us that the contract managers are currently responsible for keeping the register up to date. However, in the past, the procurement assistant responsibilities also included register update; we note this post no longer exists. The contract managers we interviewed were not aware that the register update was included in their duties.

- 2. The register did not always contain up to date, accurate and comprehensive data. Specifically:
- The names of the contract managers had not been updated; this was because there was a recent reallocation of contract managers. The names were easily retrieved and provided when requested.
- The start and end dates of the contracts were not always accurate.

For three out of the nine samples we tested, we identified that the contract was procured before the date stated in the register. This was because the contract might have been extended or renewed since first procured but the original start date has been replaced by the newest date of the extension or renewal.

For example, the IDOX uniform application suit contract had a start date of April 2017 and 5 year duration. When we requested to see the procurement documents, we were informed that the contract was procured many years ago and this was an extension of maintenance and annual support (for which an exemption had been applied). However, these should either be two separate entries on the register or, if one entry, the different services provided should be recorded separately.

 Annual amount and total amount should be recorded net of VAT (as stated by the Senior Procurement Consultant) but the register requires them to be recorded gross:

The two columns request the amounts to be recorded

inclusive of VAT.

 Some fields were not consistently completed. For example, the fields recording whether the contract was advertised on EUCJ, on contracts finder or is part of a framework agreement are often left blank.

If the contract register contains incomplete or inaccurate information, it increases the risk of documenting and monitoring of contract information and suppliers being ineffective. This can lead to decision making being based on irrelevant and inappropriate information and therefore resulting in ineffective decisions.

The Senior Procurement Consultant informed us that they were in the process of re-designing the register to make it shorter, simpler and easier to complete.

### **RECOMMENDATION:**

- 1. The procurement team should be responsible for completing and updating the contract register to ensure it is accurate and up to date. Contract managers should ensure the procurement team is aware and have overview of changes (please refer to recommendation 1.1).
- Create new Contract Register, including links to Contract documents (Paula Jarvis & Holly Sanders commence September 2019, complete August 2020)
- 2. Where a contract was renewed or extended, the original procurement date should be recorded on the register and a further column should be added to record extensions or renewals. If further services are provided by the same supplier, these should be recorded separately.
- Create new Contract Register, including links to Contract documents (Paula Jarvis & Holly Sanders commence September 2019, complete August 2020)
- 3. Clarify whether annual and total amounts should be recorded net of VAT and remove inappropriate columns from the register.
- Create new Contract Register, including links to Contract documents (Paula Jarvis & Holly Sanders commence September 2019, complete August 2020)
- 4. Ensure all fields are completed consistently.
- Create new Contract Register, including links to Contract documents (Paula Jarvis & Holly Sanders commence September 2019, complete August 2020)

RISK: A CONTRACTS REGISTER IS NOT HELD, IS INCOMPLETE OR OUT OF DATE, AND MONITORING/MANAGEMENT OF CONTRACTS IS INEFFECTIVE RESULTING IN A FAILURE OF CONTRACTS TO DELIVER AGAINST KPI'S, KEY CONTRACT PROVISIONS NOT BEING COMPLIED WITH AND EFFECTIVE RELATIONSHIPS NOT MAINTAINED WITH KEY PARTNERS.

RISK: PROCUREMENT AND CONTRACT MANAGEMENT HAS NOT BEEN REPORTED TO MANAGEMENT MEETINGS SUFFICIENTLY TO ALLOW ADEQUATE OVERSIGHT.

Ref

Significance

Finding: For smaller value contracts the approach to monitoring performance is ad-hoc and not evidenced. For bigger value contracts, monitoring and reporting is not always consistent with the policy.

4

Medium

We tested a sample of eight contracts from the contract register. Four were below the EU threshold value (total value from £2k to £46.6k) and the remaining four were of high value and above the EU threshold (£221k to £20.6m). We reviewed evidence to ascertain:

- a. whether every contract has a contract manager;
   and
- b. whether the manager is actively monitoring the performance of the contract as per the policy and procedures of the Council.

We found the following:

- a. We confirmed that every contract has a named contract manager. We interviewed the managers and confirmed that they are actively responsible for maintaining an effective relationship with the partners and resolving operational issues.
- b. Regarding monitoring of performance, the Council's "Contract Procedure Rules" state:
  - "During the life of the contract, the Officer must monitor in respect of: • performance; • compliance with specification and contract cost; • Value for Money requirements; • user satisfaction and risk management.
  - O All contracts which have a value higher than the EU Threshold limits, or which are High Risk, are to be subject to monthly formal review with the contractor. The review may be conducted quarterly if permitted by the Director of Resources.
  - For all contracts with a value higher than the EU Threshold limits, or which are High Risk, an annual report must be submitted to the relevant Committee.
  - Where the Total Value of the contract exceeds £250,000, the Officer must make a written report to the relevant Committee evaluating the extent to which the purchasing need and the contract objectives were met ...when the contract is completed."
  - o Contracts may also be classified as *high risk*, *high value* or *high profile* (p. 22). This impacts the monitoring and reporting requirements of contracts.

<u>Based on the above "Contract Procedure Rules"</u> we identified the following exceptions from our sample testing:

1. There was no evidence to confirm contracts classified as high risk, high value or high profile:

However, there is no specification of the criteria for the classification and there is no indication on the contract documentation of this classification.

2. For lower value contracts (less than the EU threshold), there is limited evidence of the monitoring process:

Contract managers maintain the relationship with the suppliers with meetings that vary in frequency. They will also be responsible for resolving any operational issues, for example issues with the parking ticket machines.

However, there is no evidence of monitoring as per the Council's procedure. Furthermore, the procedure does not specify how monitoring should be evidenced for low value contacts that may not have detailed contract requirements or KPIs agreed.

For our sample of four low value contracts, we were unable to review the contract agreements for KPIs and/or contract requirements, as they had been procured several years ago and the documents were not available. However, we received the procurement document for one of the four contracts, the Treasury Management Consultancy Services. The procurement document includes a list of requirements, for example:

- 1. Regular review meetings of treasury policies (four per year)
- 2. Training for officers on treasury management activities etc.

Even if there are no KPIs, the above procurement document requirements should be used for performance monitoring. However, this does not happen for this contract. In addition, the other contract managers we spoke to did not perform specific monitoring.

The lack of monitoring of contract requirements and/or KPIs, value for money and user satisfaction increases the risk that a contract is not effectively evaluated, which can lead to low value for money and ineffective procurement or award decisions. The Council can also not make use of potential penalties or withholding of payment clauses which could lead to unnecessary increased expenditure for the Council.

- 3. For Higher value contracts (above the EU threshold): We did not receive any evidence of monitoring or reporting for one contract:
- 3. We have received no evidence regarding the monitoring and reporting process for one of the contracts (IDOX Uniform Application suite). This is a five year contract with a total value of £221k, therefore we would expect this to have formal monthly meetings to monitor performance as per the Council procedure and an annual report submitted to a

relevant committee. It is also not clear whether there are KPIs or contract requirements (the contract was procured several years ago and the paperwork is not available). As a result, we found there to be no monitoring. We also received no evidence of reporting to a relevant committee.

- 4. One contract (Street Cleansing) does not have regular formal meetings as per the policy. This is because the supplier has been used for many years, the Council has a successful relationship with them and no concerns have been raised regarding performance. Only one KPI is monitored and performance is reported quarterly to the Overview and Scrutiny committee. However, a level of monitoring and evidence of this should take place to ensure that performance is consistent. Furthermore, if there is a future change of suppliers, the appropriate monitoring and reporting requirements should be documented to ensure they are appropriate for the value/risk/profile of the contract. A finding regarding the lack of formal meetings and KPIs for this contract has been raised in the "SAFE AND CLEAN ENVIRONMENT" audit report issued in December 2018.
- 5. For two of the contracts tested (Places for People and Waste & Recycling) the contract managers had regular (monthly or bi-monthly) formal meetings with the suppliers and performance is monitored based on KPIs or contract requirements. Both these also have provisions to apply penalties or withhold payments. The contract managers are aware of these. Performance is reported to the Communities committee and the Overview and Scrutiny Committee respectively.
  - 4. For the higher value contracts, the managers were not aware of the requirement to produce and submit an annual report to the relevant committee.

The procedure does not clearly state what this report should entail. Contract managers were also not aware of the requirement to produce an evaluation report after a contract ended (for total value above £250k). All the managers we interviewed said that they produce ad-hoc reports if they are faced with specific issues.

### **RECOMMENDATION:**

- 1. Clarify criteria for classification of contracts as high value, high risk or high profile.
- Work with MDC internal risk team (Strategy, Performance & Governance) to classify contracts (Paula Jarvis, March 2020)
- 2. Clarify the method for monitoring and evidencing contract monitoring in terms of performance, value for money, compliance with specification and contract cost and user satisfaction and risk management. The Council policy should clearly clarify the need for annual reporting, report requirements and specify where annual reporting is not applicable. This could be part of the procedure or a separate guidance document (please refer to recommendation 2.3).
- Methods and evidence requirements collate with Governance team and add to Policy & Procedure and "How To" Guide (Paula Jarvis, March 2020)
- Include in Contract Management training (Paula Jarvis, March 2020)
- 3. Ensure there is clear monitoring and reporting requirements for every contract, to provide adequate overview of all contracts. The procurement team should create a separate document/plan for all contracts that will contain the classification (in terms of value/risk/profile), the level and kind of monitoring and meetings required for each (and, if different, what currently happens and why), which Director/committee performance is reported to and a RAG rating for performance/overall relationship status (please refer to recommendation 5.2).
- Produce a monitoring and reporting schedule with Governance team (Paula Jarvis, March 2020)

# RISK: LESSONS HAVE NOT BEEN LEARNED OR RESPONDED TO IMPROVE CONTRACT MANAGEMENT PROCEDURES IN HOW FUTURE CONTRACTS ARE DEVELOPED AND MANAGED.

Ref

Significance

Finding: There is no established method to share knowledge and expertise on procurement and contract management, to ensure lessons learned are used to improve processes in the future.

5

Low

We interviewed the Senior Procurement Consultant and two of the contract managers to ascertain whether there is an established method in the Council for sharing knowledge and lessons learned on procurement and contract management in order to improve the processes in the future.

Regarding the procurement process, we learnt that if operational staff approach the procurement team for help and advice, lessons learned and expertise of the procurement team is shared. However, this is not the case where the procurement team is not involved. Similarly, if a contract manager is facing problems with a contract's performance or other issues and they approach the procurement team for advice, knowledge and previous experience is shared and utilised to improve the process in the future.

Contract managers have their own experience and knowledge acquired from managing contracts in the past that they draw on when dealing with a new partner or contract.

There is no established, formal way to capture and share knowledge and lessons learned from previous experience with staff involved in the contract management process. This would be useful as contracts may have different managers throughout their duration. The lack of knowledge sharing/ lessons learnt increases the risk that knowledge and experience is not embedded and used to improve the process, leading to avoidable mistakes being repeated, decisions that do not serve the Council's strategic agenda and may result in unnecessary increased expenditure for the Council.

### **RECOMMENDATION:**

- 1. Establish a formal method that ensures key data, lessons and experience from contract management process are captured within the organisation and more widely (for example, from the Essex Hub the Council is a member of). This could be via an annual meetings of contract managers with the procurement team and the Director of Resources where lessons learned and good practice examples can be shared.
- Discuss lessons learned & good practice and regular Hub Meetings (Paula Jarvis, March 2020)
- 2. The document/plan in recommendation 4.2 can be used to capture lessons learned or good practice during the year and after the annual meeting as well as agreed actions. These can be shared with staff across the Council as necessary.
- Discuss lessons learned & good practice and regular Hub Meetings (Paula Jarvis, March 2020)

RISK: POLICIES AND PROCEDURES ARE NOT UP-TO-DATE TO ENSURE THAT PROCUREMENT AND TENDERING OF CONTRACTS IS ROBUST AND SOUND AND ARE NOT REFLECTIVE OF RELEVANT AND CHANGING LEGISLATIVE AND REGULATORY REQUIREMENTS.

Ref

Significance

Finding: The Procurement Guide has not been reviewed since 2014. In the Contract Procedure Rules, the guidance on contract management for lower value contracts, reporting requirements and on the appropriate authorisation of exemptions is not clear

6

Low

- 1. We reviewed the "Contract Procedure Rules" and the "Procurement Guide" documents, regarding procurement and contract management. The main document, "Contract Procedure Rules" is up to date and approved by the Council. However, the review of a separate "Procurement Guide" identified that this document was last updated in 2014 and it is not clear if it has been reviewed since. This document's contents are included in the "Contract Procedure Rules", however it provides more detailed guidance on the procurement aspect of the process. The lack of a clear review trail increases the risk that the two documents are not updated simultaneously and that the guidance is not consistent across both documents.
- 2. There is a lack of clear guidance on the required contract management process for lower value contracts. (Please refer to finding 4.2).

The lack of guidance increases the risk that contract managers are not aware of their responsibilities and that contract management practice across the Council is inconsistent. This leads to ineffective contract monitoring/ evaluation and increased costs for the Council.

- 3. The guidance regarding the appropriate authorisation of exemptions in the "Contract Procedure Rules" (section 3) is not clear. For example, the guidance states:
  - "3.2 Where a proposed contract is likely to exceed the European Union (EU) Threshold, Directors have no delegated powers and the matter has to be determined by the council (see Rule 3.1). No exemption can be used if the EU Procedure applies or if the Total Value exceeds £24,999".

It is not clear whether exemptions above the EU threshold (where the EU procedure is likely to apply) are allowed or not. Also, the total value of £25k over which "no exemption can be used" is quite low and we came across contracts of higher value in our sample testing, where exemption had been applied (Integrated income / Cash Receipting System & E-Payments Solutions software maintenance; although we did not find the required evidence for approval of exemptions).

### **RECOMMENDATION:**

- 1. Review the Procurement Guide to ensure it is up to date. Document the date of last and next review and ensure these match the other procurement related procedure documents.
- Delete Procurement Guide from Intranet and create Procurement / Contract Management "How To" guide (Paula Jarvis, March 2020)
- Update Policy & Procedure at time of Brexit and link into above document (Paula Jarvis, Commence October 2019, complete March 2020)
- 2. Ensure the contract management section of the procedures incudes adequate detail and guidance for the monitoring, review, evaluation and reporting of lower value contracts. Alternatively, this could be part of separate contract management guidance (please refer to recommendations 4.2 and 2.3)
- Create Procurement / Contract Management "How To" guide (Paula Jarvis, March 2020)
- 3. Clarify further the section regarding exemptions and appropriate approval process in the "Contract Procedure Rules" document.
- Update Policy & Procedure and link into above document (Paula Jarvis, March 2020)

MALDON DISTRICT COUNCIL

### STAFF INTERVIEWED

BDO LLP APPRECIATES THE TIME PROVIDED BY ALL THE INDIVIDUALS INVOLVED IN THIS REVIEW AND WOULD LIKE TO THANK THEM FOR THEIR ASSISTANCE AND COOPERATION.

Name Job Title

Paula Jarvis Senior Procurement Consultant

Emma Foy Director of Resources

Richard Heard Leisure & Community Services Manager

Carol Love Specialist Contracts & Commissioning (Waste), Strategy,

Performance & Governance

Sue Green Customer, Community and Casework Manage

Adrian Rayner Community Protection Team Leader

Simon Walker Finance Specialist

Michelle Edgington Waste Services Administrator

| APPENDIX I - DEFINITIONS |  |  |   |  |  |  |
|--------------------------|--|--|---|--|--|--|
| LEVEL OF<br>ASSURANCE    | DESIGN OF INTERNAL CONTROL FRAMEWORK   |  | OPERATIONAL EFFECTIVENESS OF CONTROLS   |  |  |  |
|                          | FINDINGS<br>FROM REVIEW  | DESIGN<br>OPINION  | FINDINGS<br>FROM REVIEW   | EFFECTIVENESS<br>OPINION   |  |  |
| Substantial              | Appropriate procedures and controls in place to mitigate the key risks.  | There is a sound system of internal control designed to achieve system objectives.                       | No, or only minor, exceptions found in testing of the procedures and controls.  | The controls that are in place are being consistently applied.                                     |  |  |
| Moderate                 | In the main there are appropriate procedures and controls in place to mitigate the key risks reviewed albeit with some that are not fully effective.                                   | Generally a sound system of internal control designed to achieve system objectives with some exceptions. | A small number of exceptions found intesting of the procedures and controls.  | Evidence of non compliance with some controls, that may put some of the system objectives at risk. |  |  |
| Limited                  | A number of significant gaps identified in the procedures and controls in key areas. Where practical, efforts should be made to address in-year.                                       | System of internal controls is weakened with system objectives at risk of not being achieved.            | A number of reoccurring exceptions found in testing of the procedures and controls. Where practical, efforts should be made to address in-year.   | Non-compliance with<br>key procedures and<br>controls places the<br>system objectives at<br>risk.  |  |  |
| No                       | For all risk areas there are significant gaps in the procedures and controls. Failure to address in-year affects the quality of the organisation's overall internal control framework. | Poor system of internal control.   | Due to absence of effective controls and procedures, no reliance can be placed on their operation. Failure to address in-year affects the quality of the organisation's overall internal control framework. | Non compliance<br>and/or compliance<br>with inadequate<br>controls.                                |  |  |

| RECOMMENDATION SIGNIFICANCE |  |  |  |  |
|-----------------------------|--|--|--|--|
| High                        | A weakness where there is substantial risk of loss, fraud, impropriety, poor value for money, or failure to achieve organisational objectives. Such risk could lead to an adverse impact on the business. Remedial action must be taken urgently.  |  |  |  |
| Medium                      | A weakness in control which, although not fundamental, relates to shortcomings which expose individual business systems to a less immediate level of threatening risk or poor value for money. Such a risk could impact on operational objectives and should be of concern to senior management and requires prompt specific action. |  |  |  |
| Low                         | Areas that individually have no significant impact, but where management would benefit from improved controls and/or have the opportunity to achieve greater effectiveness and/or efficiency.  |  |  |  |

### APPENDIX II - TERMS OF REFERENCE

### **PURPOSE OF REVIEW:**

The purpose of this review is to consider the adequacy and effectiveness of arrangements for contract management and procurement, ensuring arrangements are robust and transparent and that effective relationships are maintained with key partners.

### **KEY RISKS:**

Policies and procedures are not up-to-date to ensure that procurement and tendering of contracts is robust and sound and are not reflective of relevant and changing legislative and regulatory requirements.

Roles and responsibilities for procurement and contract management across the Council are not clearly assigned and/or are not being executed at senior leadership level or within operational management

Procurement activity is not compliant with the Contract Procedure Rules and procurement Code of Practice and due diligence such as financial checks is not undertaken on potential contractors to ensure that the contractor is fit for purpose.

A contracts register is not held, is incomplete or out of date, and monitoring/management of contracts is ineffective resulting in a failure of contracts to deliver against KPI's, key contract provisions not being complied with and effective relationships not maintained with key partners.

Payments made to contractors do not accord with authorised contracts, approved variations and agreed KPI targets and inappropriate incentive mechanisms are in place.

Procurement and contract management has not been reported to management meetings sufficiently to allow adequate oversight.

Lessons have not been learned or responded to improve contract management procedures in how future contracts are developed and managed.

### SCOPE OF REVIEW:

The review will consider the adequacy and effectiveness of the controls in place around contract procurement, management and purchasing to highlight any areas where the controls could be improved

- Appropriate procurement policy and local procedures are in place which has been approved by management at appropriate intervals, to ensure the latest legislative requirements are incorporated into the Policy.
- Clear central structure is in place, adequately supported by clear and measureable objectives and a scheme of delegation with designated approval limits included within procurement policy are appropriate and are being adhered to, particularly regarding tendering, use of quotations etc.
- Procurement activities are adequately monitored and consulted, with due diligence checks in place to ensure financial performance and quality of contractors is adequately monitored and performance reviews are undertaken with actions taken to improve performance and achieve value for money.
- An appropriate contracts register is in place, identifying current contracts, original
  contract period and extensions, KPI's, value and assigned responsibility and approved
  variations to the contract, with appropriate supporting evidence available and
  appropriately maintained. Appropriate monitoring arrangements in place, ensuring

contracts are delivering against KPI's, key contract provisions are complied with and effective relationships is maintained with key partners.

- Incidents of waiving of Financial Regulations or Contract Procedure Rules are not identified or not properly reported
- Payments to contractors are made in compliance with agreed contract payment schedule
  and performance KPIs are set to ensure appropriate coverage to manage risks, reports on
  activity are produced on a timely basis which are effective along with KPIs to correct
  personnel and action is taken depending on the outcome of reports issued.
- There is agreed and regular reporting that identifies trends and meets expected compliance/performance indicators which have been set and sound road map activities are in place to meet the expectations set out and support strategic direction.

### APPROACH:

Our approach will be to conduct interviews to establish the controls in operation for each of our areas of audit work. We will then seek documentary evidence that these controls are designed as described. We will evaluate these controls to identify whether they adequately address the risks.

We will seek to gain evidence of the satisfactory operation of the controls to verify the effectiveness of the control through use of a range of tools and techniques.

### BAF/CRR REFERENCE:

CRR 15 - Failure to plan and deliver balanced budgets over the medium term.

# The matters raised in this report are only those which came to our attention during the course of our audit and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. The report has been prepared solely for the management of the organisation and should not be quoted in whole or in part without our prior written consent. BDO LLP neither owes nor accepts any duty to any third party whether in contract or in tort and shall not be liable, in respect of any loss, damage or expense which is caused by their reliance on this report. FOR MORE INFORMATION: **Greg Rubins** Greg.Rubins@bdo.co.uk BDO LLP, a UK limited liability partnership registered in England and Wales under number OC305127, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms. A list of members' names is open to inspection at our registered office, 55 Baker Street, London W1U 7EU. BDO LLP is authorised and regulated by the Financial Conduct Authority to conduct investment business. BDO Northern Ireland, a partnership formed in and under the laws of Northern Ireland, is licensed to operate within the international BDO network of independent member firms. Copyright ©2018 BDO LLP. All rights reserved.