

Brighton & Hove City Council

Audit & Standards Committee

Agenda Item 11

Subject: Procurement Compliance Audit 2021/22

Date of meeting: 28 June 2022

Report of: Executive Director Governance, People & Resources

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Ward(s) affected: All

For general release

1 Purpose of the report and policy context

- 1.1 Following two recent internal audit reviews (Phase 1 and 2) of compliance with Contract Standing Orders, which concluded minimal assurance, this report updates on progress to implement the recommendations and agreed actions emanating from the audit reviews.
- 1.2 The audit reviews were conducted on an 'exception basis' meaning that the audit reviews were specifically focused on identified incidences of non-compliance. However, the vast majority of the council's circa £260 million procurement and contracting activity is compliant and follows good practice in terms of governance and decision-making through reporting to members, including the Member Procurement Advisory Board, and through the carefully considered use of different procurement routes, including identifying the best value for money routes via government buying frameworks. The council also uses waivers to achieve value for money, for example, by aligning the expiry of similar or related contracts to achieve value for money through economies of scale, including through collaborations with partners.
- 1.3 Importantly, the council has not fallen foul of procurement legislation, i.e. has never been fined, and has successfully defended all potential legal challenges to its procurement processes and contract awards. Similarly, no procurement-related fraud has been identified. The primary risk relating to non-compliance is therefore one of not being able to satisfy itself that value for money has been achieved in relation to the procurements identified in the audit review.

2 Recommendations

- 2.1 That the Audit & Standards Committee notes the contents of this report including progress made to date and ongoing actions in response to audit recommendations detailed in Appendix 1.

3 Context and background information

- 3.1 A number of individual audit reviews, across various directorates, had previously identified some areas of non-compliance with the council's Contract Standing Orders (CSO's).

In addition, the COVID-19 pandemic, during 2020, had increased the need for emergency procurements made at short notice, increasing the risk of non-compliance.

- 3.2 A further audit review was undertaken to obtain assurance that where suppliers have been paid more than £75,000, CSOs were complied with and value for money (VFM) had been demonstrated. This review focused initially on compliance with CSO 12 (contracts exceeding £75k) and CSO 17 (Contracts Register and Records).
- 3.3 The initial audit review (phase 1) used data analytics to match data from the Civica Financials payment system against the council's published Contract Register. Following substantial data cleansing, identification and some reclassification, a significant number of discrepancies remained outstanding. A subsequent, 'exception based' review (phase 2) of 30 records was undertaken to identify any further non-compliance to CSO's. The findings, recommendations and agreed actions are attached at Appendix 1.
- 3.4 Contract Standing Orders require all council officers to comply with tendering processes when procuring goods and services. They are embedded in the Constitution and are the responsibility of all Chief Officers (Executive Directors) and staff nominated by them to undertake procurement activities. To support this, comprehensive guidance and information relating to the tendering of goods and services is provided on the council's intranet (the Wave) and the Procurement Team undertake training for services to increase awareness of Officers' responsibilities. The issue of compliance is regularly reported through Key Performance data and through updates to the Strategic Risk Register (SR29).
- 3.5 The Procurement Team have successfully increased compliance with CSO's over many years by building, maintaining and monitoring a Forward Plan (pipeline of contracts). The Forward Plan provides comprehensive information on existing and future tendering processes and has provided useful insight to Senior Officers and Members regarding procurement activity. The current Contract Standing Orders require all procurements over £75k to be referred to the Procurement Team. Processes under this threshold will generally be managed by the requesting service. The latest spend analysis shows 90% (£234m) of total council spend falls into the over £75k threshold.
- 3.6 Current data analysis indicates approximately 92-95% of over-threshold contracts (by value) are tendered compliantly. Where non-compliant spend is identified, efforts are made to bring the contract in line with CSO's. Where the Procurement Team identify areas of significant concern, these are reported to Internal Audit for further investigation and the team works with the relevant service directorate and the legal team to resolve issues.
- 3.7 The current BHCC Financial and Purchasing systems (both supplied by Civica) do not provide a facility to prevent the placement of purchase orders where no contract or framework is in place. This allows officers throughout the council the possibility of procuring goods or services without the input or knowledge of the Procurement Team. This means that the analysis of spend, by the Procurement Team, is necessarily retrospective and as such the council's systems do not support tight controls on over-threshold procurements at the point of procurement/ordering.

The Financial and Purchasing systems are currently under review as part of a wider review of corporate systems including Finance, HR, Payroll and other core systems, all of which, although updated and patched, are over 10 years old. Members of the Procurement team are part of this review. The issue of purchase orders matching contracts has been raised as a priority.

- 3.8 During 2020, one third of Procurement Team resources were redirected to urgent issues such as sourcing of PPE, negotiating supplier reliefs and other Covid-19 related matters. This resulted in activity around spend analysis not taking place as planned. In addition, some of the lower value tenders that would normally have been undertaken by the Procurement Team were necessarily referred back to directorates.
- 3.9 In terms of mitigating and preventing compliance risks in future, the use of Orbis Sourcing Solutions provides a professional route to market for services and this service will reduce the potential for non-compliance as its use increases. Since October 2021, Sourcing Solutions has managed or is managing 78 tenders on behalf of BHCC with a forward plan of 100+. The Procurement Team also now has in place a Data Analytics officer which had been a capacity issue for a long period. This capacity allows the team to monitor spend more efficiently and identify non-compliance more speedily.
- 3.10 The current Procurement Team establishment is designed to manage the council's high value and high risk projects. Therefore any requirement to manage all projects within the authority, including those of lower risk and/or value, would require a significant increase in capacity but would not necessarily represent good value for money. In particular, there are over 200 managers with responsibility for procuring and tendering contracts across the council and it is clearly far more cost effective to provide them with appropriate corporate training, guidance, on-line tools, systems and advice to enable managers across the council to procure and tender contracts in compliance with CSOs.
- 3.11 However, Procurement Team (Orbis) resources are kept under review by the council, taking into account volumes of activity, the growing complexity of procurements, the effectiveness of corporate systems and controls, and the support required by services to achieve value for money. The latter is a key area as officers in services are unlikely to ever have the depth of knowledge of dedicated procurement officers, many of whom are professionally qualified CIPS practitioners, and therefore reviewing the balance of support is an ongoing process, particularly as procurement legislation and practice increases in complexity.
- 3.12 It should also be noted that non-compliance to CSO 17 does not necessarily translate into fraudulent activity and the internal audit reviews have not identified any cases of fraud. Updating of the Contract Register is an administrative issue, where increased awareness, training and guidance will generally remedy the situation.

4 Analysis and consideration of alternative options

- 4.1 The actions to improve compliance issues identified by the internal audit reviews have been developed by management and agreed with Internal Audit, and, if implemented successfully should address the issues raised.

When the actions are substantially completed, a further review of compliance by the Procurement Team will be undertaken to assess effectiveness and consider further options if necessary.

- 4.2 Significant additional staffing or external resources, either in services or within the Procurement Team, could potentially be applied to improve compliance but this would be an expensive option and would not represent good value for money in the context of the council's financial constraints. The process of undertaking internal audit reviews and responding to the findings and recommendations of these reviews to continuously improve internal controls and compliance is a more efficient and sustainable practice.

5 Community engagement and consultation

- 5.1 No consultation or engagement was undertaken in relation to this report.

6 Conclusion

- 6.1 Appendix 1 shows that most of the agreed actions to improve internal controls and compliance in response to the audit reviews are either completed or significant progress has been made. There are a small number of actions that require longer term solutions and these are also in train, including the review of the council's corporate systems requirements.

7 Financial implications

- 7.1 There are no direct financial implications arising from this report however the actions to improve compliance and awareness of procurement processes, procedures and controls has the potential to help services achieve better value for money outcomes.

Finance officer consulted: James Hengeveld Date consulted: 13/6/22

8 Legal implications

- 8.1 As set out in the report, all procurement activity should comply with the Council's Contract Standing Orders. Where the estimated value of a contract is over the relevant threshold, Officers are also required to comply with the Public Contracts Regulations 2015 or the Concession Contract Regulations 2016.

Name of lawyer consulted: Alice Rowland Date consulted : 20/6/22

9 Equalities implications

- 9.1 There are no direct equalities implications in this report.

10 Sustainability implications

- 10.1 There are no direct sustainability implications in this report, however, actions to improve awareness of and compliance with procurement processes, procedures and controls provides greater assurance that procurement policy and practice is being consistently adhered to, including meeting the council's sustainable procurement policy and objectives.

11 Social Value and procurement implications

11.1 Similarly, there are no direct social value implications in this report, however, actions to improve awareness of and compliance with procurement processes, procedures and controls provides greater assurance that procurement policy and practice is being adhered to, including the council's social value procurement policy and objectives.

12 Crime & disorder implications:

12.1 There are no direct implications arising from this report but actions to improve compliance with CSO's and procurement processes, procedures and controls will further help to minimize the potential for fraud and error in procurements.

Supporting Documentation

Appendices

1. Procurement Compliance Update

