



# Dacorum Borough Council

## Final Internal Audit Report

### Contract Management

November 2016

This report has been prepared on the basis of the limitations set out on page 13.

CONFIDENTIAL

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#### **Key Dates:**

Date of fieldwork: July/August 2016

Date of draft report: September 2016

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# 1. Executive Summary

## 1.1. Background

As part of the Internal Audit Programme for 2016/17, we have undertaken an audit of the Council's systems of internal control in respect of Contract Management.

Four contracts were chosen from across the Council, these contracts were;

- Sun Realm- Boiler Repairs, Services and Replacements;
- Comensura - Temporary & Agency Staff;
- T Loughman & Co. - Construction of the Bus Interchange in Hemel Hempstead;
- P Casey Ltd - Construction and Regeneration of the Water Gardens.

## 1.2. Audit Objective and Scope

The overall objective of this audit was to provide assurance over the adequacy and effectiveness of current controls over Contract Management, and provide guidance on how to improve the current controls going forward.

In summary, the scope covered the following areas: Form of Contract, Variation of Contract, Governance Arrangements, Contract Management, Contract Payments and Budgetary Controls, and Management Reporting.

## 1.3. Summary Assessment

Our audit of the Council's internal controls operating over Contract Management found that there is a sound system of internal control designed to achieve the system objectives. There is however evidence that the level of non-compliance with some of the controls may put some of the system objectives at risk.

Our assessment in terms of the design of, and compliance with, the system of internal control covered is set out below:

Evaluation Assessment	Testing Assessment
Full	Substantial

Management should be aware that our internal audit work was performed according to UK Public Sector Internal Audit Standards (PSIAS) which are different from audits performed in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. Similarly, the assurance gradings provided in our internal audit report are not comparable with the International Standard on Assurance Engagements (ISAE 3000) issued by the International Audit and Assurance Standards Board.

Similarly, the assessment gradings provided in our internal audit report are not comparable with the International Standard on Assurance Engagements (ISAE 3000) issued by the International Audit and Assurance Standards Board. The classifications of our audit assessments and priority ratings definitions for our recommendations are set out in more detail in Appendix A, whilst further analysis of the control environment over Contract Management are shown in Section 3.

#### 1.4. **Key Findings**

We have raised one Priority 1, one Priority 2 and one Priority 3 recommendation where we believe there is scope for improvement within the control environment. We have also raised one Systems Improvement Opportunity. The recommendations raised have been set out below:

- Key Performance Indicators / Formal milestones for Contractors (SIO);
- Confirmation of Appropriate Checks on Staff / Contractors (Priority 2);
- Analysis of Contract and Non-Contract spend (Priority 1); and
- Management Information should be scrutinised for accuracy (Priority 3).

On inspection of the four contracts chosen across the Council, it was identified that in one case the contract had not been dated. There was a hand written date of commencement for the contract; however, the dates of agreement being signed by the two parties were left blank. A recommendation has not been raised in this instance as the contract stated the commencement of the contract.

Full details of the audit findings and recommendations are shown in Section 4 of the report.

#### 1.5. **Management Response**

We received the management response in a timely manner and the responses have been included in the main body of the report.

#### 1.6. **Acknowledgement**

We would like to take this opportunity to thank all staff involved for their time and co-operation during the course of this visit.

## 2. Scope of Assignment

### 2.1. Objective

The overall objective of this audit was to provide assurance that the systems of control in respect of Contract Management, with regards to the areas set out in section 2.3, are adequate and being consistently applied.

### 2.2. Approach and Methodology

The following procedures were adopted to identify and assess risks and controls and thus enable us to recommend control improvements:

- Discussions with key members of staff to ascertain the nature of the systems in operation;
- Evaluation of the current systems of internal control through walk-through and other non- statistical sample testing;
- Identification of control weaknesses and potential process improvement opportunities;
- Discussion of our findings with management and further development of our recommendations; and
- Preparation and agreement of a draft report with the process owner.

### 2.3. Areas Covered

The audit was carried out to evaluate and test controls over the following areas:

#### **Form of Contract;**

To confirm that signed contracts are in place which include terms and conditions to protect the Council. To confirm that performance requirements and indicators are outlined to help ensure that the council receives quality services and value for money.

#### **Variations to Contract;**

To confirm that variations to contract are appropriately documented and approved by both the Council and the contractor.

#### **Governance Arrangement;**

To ensure that roles and responsibilities relating to the contract management are clearly defined and agreed with the relevant staff. To ensure that adequate governance structure is in place to deal with any matters requiring escalation. .

#### **Contract Management;**

To confirm that performance against contract is monitored and corrective action is taken where poor performance is identified.

To ensure that the contract is managed in accordance with the Procurement Standing Orders (Contract Management).

#### **Contract Payments and Budgetary Control;**

To confirm that payments are made in accordance with contractual agreements and the Council's financial scheme of delegation. To confirm that agreed budgets are monitored and action taken where variances are identified. .













#### **Management Reporting;**

To confirm that contractor performance and budget monitoring are appropriately reported to management.

### 3. Assessment of Control Environment

The following table sets out in summary the control objectives we have covered as part of this audit, our assessment of risk based on the adequacy of controls in place, the effectiveness of the controls tested and any resultant recommendations.

The classifications of our assessment of risk for the design and operation of controls are set out in more detail in Appendix A.

Control Objectives Assessed	Design of Controls	Operation of Controls	Recommendations Raised
Form of Contract			Systems Improvement Opportunity
Variations to Contract			
Governance Arrangements			
Contract Management			Recommendation 1 Recommendation 2 Recommendation 3
Contract Payments & Budgetary Control			
Management Reporting			

\* The Operation of Controls for Contract Management has been determined Limited in the case of one Contract, the remaining three Contracts are at a Substantial level.

The classifications of our assessment of risk for the design and operation of controls are set out in more detail in Appendix A.

## 4. Observations and Recommendations

### KPIs / Formal Milestones for Contractors (System Improvement Opportunity)

<p><b>Recommendation</b></p> <p>The Council should ensure that Key Performance Indicators and sectional completion dates where appropriate are written into contracts clearly defining the standards and milestones against which the Contractor can be measured.</p>
<p><b>Observation</b></p> <p>Key Performance Indicators and milestones allow for clarification of the required level of service expected from the Contractor.</p> <p>Examination of four different contracts across the Council identified that in one case, the Water Gardens restoration and regeneration, there were no Key Performance Indicators / sectional completion dates in place. There was a commencement date and expected completion date for the project and the contract is required to follow the service provisions set out in it, including use of the correct standard of building materials. The original completion date for the contract was April 2016. On review, the new estimated completion is 2<sup>nd</sup> December 2016 with a number of elements still outstanding on the contract. The price of the project has been set out in the Bill of Quantities.</p> <p>The contract does not make provisions for liquidated damages and where any delays result in increased costs such as overheads, labour or storage, these will be negotiated upon final valuation including an assessment of the party responsible for the delay and quantifying any damage suffered.</p> <p>Where there are no KPIs and/or sectional completion dates are not used, there is a risk that delivery of the contract may not be in line with the contract completion date. In the current position, the Council has little standing to impose pressure on the contractor to deliver in line with the contract deadlines. There are no penalties or incentives in place for timely delivery.</p>
<p><b>Responsibility</b></p> <p>Group Manager - Procurement, Compliance &amp; Commissioning</p>
<p><b>Management response / deadline</b></p> <p><u>Group Manager Commissioning, Procurement &amp; Compliance</u></p> <p>The Group Manager Commissioning, Procurement &amp; Compliance has the responsibility for ensuring that the Council's approach to contract management is clearly set out for Officers with contract management responsibilities to follow and that they are reviewed and updated to ensure that they are fit for purpose and follow best practice.</p> <p>Section 14 (Contract Management) of the Council's Commissioning &amp; Procurement Standing Orders includes a clause covering 'contract monitoring and review' and makes specific reference to the contract managers responsibility to monitor, record and report on Key Performance Indicators.</p> <p>Section 14 is constantly reviewed and developed to ensure a consistent and robust approach to contract management is undertaken. A training and awareness programme for relevant Officers to attend will be arranged for the end of the 2016/17 financial year.</p> <p>Due to the different type and nature of contracts that the Council awards, the contract management guidance that is set out in the Council's Commissioning &amp; Procurement Standing Orders will not address all of the bespoke arrangements that are sometimes required within a contract.</p> <p>In future it is recommended that when a contract manager requires a contract to be drafted that either significantly varies the current standard terms &amp; conditions templates or requests for the contract to be managed in a manner that does not follow the current contract management guidance, then the GM Commissioning, Procurement &amp; Compliance will draft an 'exception</p>

report' providing justified reasons for taking this approach and that this 'exception report' is signed off by the relevant AD/GM and Legal Services.

#### Group Manager Strategic Planning & Regeneration

The contract manager for the Water Gardens contract has given thought to this contract prior to awarding it and can demonstrate reasons for not including KPI's, Sectional Completion and LAD's.

- The Council's Legal team considered that it was not appropriate to have KPIs in this contract, the performance of the contract was monitored and reported through the Regeneration Programme Board and Corvu, performance was also reviewed at monthly progress meetings with the Contractor chaired by the Contract Administrator.
- It wasn't appropriate to use 'sectional completion' on this contract as there were too many interlinked areas like the footpaths and planting and it is not normal practice to ask for this as it creates issues with completion dates and multiple maintenance periods.

'Liquidated and Ascertained Damages' (LADS) are not permitted to act as a penalty clause for a Contractors failure to meet deadlines. LADS are supposed to compensate the Council for losses incurred as a result of the delay in completion and to use LADS you are required to be able to calculate, by reference to a formula or other evidence, what those losses might be. In the case of the Water Gardens contract it would be difficult to evidence loss to the Council as a result of the delay, i.e. the Council would not incur any financial harm from delay on a project like this.



**Recommendation 1: Confirmation of Appropriate Checks on Staff / Contractors (Priority 2)****Recommendation**

The Council should obtain assurances from the Contractor that Eligibility to Work in the UK checks have been carried out for staff brought in from Temporary Agencies. The Council should also request confirmation that relevant background checks have been completed for all temporary / agency staff posted to roles where one is required, for example DBS Checks.

**Observation**

The Council should request positive confirmation from the Contractor that temporary and agency staff have been appropriately vetted and meet the post requirements to work at the Council.

In discussion with the HR Team Leader and HR Lead Officer, it was confirmed that as part of the agreement with Temporary Agencies, the agencies themselves must complete the relevant background and eligibility checks. It was confirmed that evidence or confirmation of these checks is not provided to the Council for assurance purposes.

Where the Council does not hold the assurance that the relevant background and eligibility checks have been completed, the Council cannot be sure that the temporary worker has the suitability to have access to the sensitive information they will be exposed to.

**Responsibility**

Group Manager - Procurement, Compliance & Commissioning

**Management response / deadline**Group Manager Commissioning, Procurement & Compliance

The current Temporary Agency contract will be coming to a conclusion shortly and a new contract is close to being awarded.

In both the existing and the new contracts the staff are employed by the agency, so the responsibility is on the agency to check their right to work in the UK, NI details and DBS documentation.

It is recommended that at the very outset of the contract, the contract manager requests confirmation in writing from the agency of the controls and processes the agency has in place to ensure that the relevant background and eligibility checks are being carried out to a satisfactory standard.

Group Manager – People & Performance

After reviewing the contract documentation I can confirm that it is the responsibility of the agency to carry out the background and eligibility checks.

In the future the contract manager will be instructed to request a quarterly audit report from the contractor confirming that all agency workers have the right to work in the UK and a DBS check (where applicable).

30<sup>th</sup> November 2016

**Recommendation 2: Off Contract Spend Analysis for Agency/Temporary Staff (Priority 1)****Recommendation**

Off-contract spend relating to Agency and Temporary Staff should be reviewed and analysed to ensure that Agency and Temporary Staff are appointed through the Council's approved agency where possible. Where the level of off-contract spend is high, the Council should determine whether a separate contract is required to fulfil the Council's needs and also whether a formal tender process is required.

**Observation**

Off-contract spend should be monitored to ensure that value for money is achieved and also to ensure that the Council does not breach the terms and conditions of the existing contract and/or procurement rules (internal policy and EU Procurement Directives).

Analysis of spend between the Council's main agency (where there is a corporate contract in place) and another agency (without a corporate contract) showed that the total spend with the main agency in 2015/16 was £335,740.90, compared to the total spend with another agency of £321,652.90 (inclusive of hourly rates to the worker and agency fees).

Where the Council has significant spend on agencies with no contractual agreement, the Council may incur additional costs if the fees are not negotiated properly. In addition, there is a risk that the Council's spend may exceed the Public Procurement Threshold and require a formal procurement process to be followed. Where the main agency is not used as a first preference, the Council may not be fulfilling the terms and conditions of the contract

**Responsibility**

Group Manager - Procurement, Compliance & Commissioning

**Management response / deadline**

Group Manager Commissioning, Procurement & Compliance

To support compliance with the Council's commissioning & procurement processes, the Council have recently increased the level of governance in relation to third party expenditure; this includes the 'No PO, No Pay' policy, the introduction of Electronic Purchasing Cards, focussed approach on requisition authorisation and an increase in the scrutiny of contractor expenditure.

The Council's current Temporary Agency contract is coming to an end and a new contract is close to being awarded. The existing contract utilised a 'vendor neutral' approach which can sometimes limit the number of applications we receive and has caused the Council some issues in that the supplier has not always been able to provide the appropriate calibre of staff. This is coupled with dwindling external labour markets in some professional areas such as planning, Housing and Building Control which has resulted in the Council having to look for alternative supply arrangements. The new contract will be based upon a 'Supply Chain Optimisation' approach which broadens the agency reach and should address all of the issues that the Council has faced with the current contract.

It is likely that there will still be the odd occasion where a specialist or bespoke requirement will arise that will not be able to be satisfied from this corporate contract and that this requirement will need to be fulfilled utilising another approach. Where this is the case, it is important that the client officer complies with the Council's commissioning and procurement processes.

The increased focus on the requisition authorisation process will identify any potential expenditure prior to the expenditure being committed.

30<sup>th</sup> November 2016

Assistant Director Planning & Regeneration

*In 2015, the service suffered a high and unusual degree of turnover including staff leaving for new posts, one on career break, and maternity leave. Also the previous Group Manager left for a role in the private sector.*

*To maintain the statutory service in Planning (Development Management), it was necessary to make a range of agency appointments to cover key vacancies.*

*There was, after considering and deploying other options, the need to fill vacant posts swiftly. This was done with the Oyster Partnership which specialises in professional appointments. The service would not have been able to make the necessary appointments through Comensura which covers more generic staff roles and skills.*

*To not appoint into vacant roles would lead to a decline in planning performance and put the Council at risk of Standards intervention by DCLG, or being opened up to the service being provided by an Alternative Provider. Slow performance would also delay key developments taking place, with negative effects on the local economy.*

*The hourly and daily rates put forward were understood to be competitive*





**Recommendation 3:** Management Information should be scrutinised (Priority 3)

<p><b>Recommendation</b></p> <p>Management should scrutinise the information provided to them by the Contractor to ensure that the reported information is accurate, valid, and representative of actual performance.</p>
<p><b>Observation</b></p> <p>Management Information should be scrutinised to ensure that the performance information and statistics provided by the contractor are a true representation of the actual deliverables and performance.</p> <p>Review of all Management Information reports from October 2014 to March 2016 for one contract identified that the contractor had reported zero unfilled positions during this period.</p> <p>In discussion with the HR Team Leader it was confirmed that the contractor has not been able to fill all positions requested, and the Council has been forced to source staff from another service provider, therefore cancelling requests due to non-fulfilment.</p> <p>The Council should ensure that the true performance of the contractor is captured within the management information, and clearly define where positions are cancelled due to non-fulfilment. The contractor has a KPI in place for a 98% fulfilment rate per month; where this is not met, the contractor must identify and explain the reason for non-fulfilment.</p> <p>Where management information is not scrutinised, the integrity of the report may be compromised. This may lead to poor performance not being identified and addressed in a timely manner.</p>
<p><b>Responsibility</b></p> <p>Group Manager - Procurement, Compliance &amp; Commissioning</p>
<p><b>Management response / deadline</b></p> <p><u>Group Manager Commissioning, Procurement &amp; Compliance</u></p> <p>Monitoring a Contractors performance forms an integral element of a contract manager's role; this includes continuously scrutinising and challenging the data that supports the performance indicators.</p> <p>Section 14 (Contract Management) of the Council's Commissioning &amp; Procurement Standing Orders includes a clause covering 'contract monitoring and review' and makes specific reference to the contract managers responsibility to monitor, record and report on Key Performance Indicators.</p> <p>Section 14 is constantly reviewed and developed to ensure a consistent and robust approach to contract management is undertaken. A training and awareness programme for relevant Officers to attend will be arranged for the end of the 2016/17 financial year.</p> <p><u>Group Manager – People and Performance</u></p> <p>Following discussion with the contract manager I can confirm that the agency identifies and explains the reason for non-fulfilment and informs the Council on a regular basis through dialogue as part of the customer/client relationship.</p> <p>It is accepted that the current process does not document and record formal minutes and/or actions, as it was perceived that this approach would have added unnecessary administration for very little benefit.</p> <p>To ensure the contract manager is fully aware of the corporate approach to contract management, they will be asked to attend the awareness training run by procurement.</p> <p>March 2017</p>

## Appendix A - Reporting Definitions

### Audit assessment

In order to provide management with an assessment of the adequacy and effectiveness of their systems of internal control, the following definitions are used:

Level	Symbol	Evaluation Assessment	Testing Assessment
<b>Full</b>		There is a sound system of internal control designed to achieve the system objectives.	The controls are being consistently applied.
<b>Substantial</b>		Whilst there is a basically sound system of internal control design, there are weaknesses in design which may place some of the system objectives at risk.	There is evidence that the level of non-compliance with some of the controls may put some of the system objectives at risk.
<b>Limited</b>		Weaknesses in the system of internal control design are such as to put the system objectives at risk.	The level of non-compliance puts the system objectives at risk.
<b>Nil</b>		Control is generally weak leaving the system open to significant error or abuse.	Significant non-compliance with basic controls leaves the system open to error or abuse.

The assessment gradings provided here are not comparable with the International Standard on Assurance Engagements (ISAE 3000) issued by the International Audit and Assurance Standards Board and as such the grading of 'Full' does not imply that there are no risks to the stated control objectives.

### Grading of recommendations

In order to assist management in using our reports, we categorise our recommendations according to their level of priority as follows:

Level	Definition
<b>Priority 1</b>	Recommendations which are fundamental to the system and upon which the organisation should take immediate action.
<b>Priority 2</b>	Recommendations which, although not fundamental to the system, provide scope for improvements to be made.
<b>Priority 3</b>	Recommendations concerning issues which are considered to be of a minor nature, but which nevertheless need to be addressed.
<b>System Improvement Opportunity</b>	Issues concerning potential opportunities for management to improve the operational efficiency and/or effectiveness of the system.

## Appendix B - Staff Interviewed

The following personnel were consulted:

- Neil Brown Mechanical & Electrical Team Leader - Property and Place
- Wimal Alahakon Commercial Relationship Surveyor
- Fiona Williamson Group Manager (Property and Place)
- Claire Covington Strategic Planning and Regeneration Officer (Green Spaces)
- Emma Cooper Strategic Planning and Regeneration Technical Assistant
- Jo Deacon Strategic Planning and Regeneration Technical Assistant
- Anne Stunell Human Resources Team Leader
- Katherine Thomas Assistant Accountant

We would like to thank the staff involved for their co-operation during the audit.

## Statement of Responsibility

We take responsibility for this report which is prepared on the basis of the limitations set out below.

The matters raised in this report are only those which came to our attention during the course of our work and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Recommendations for improvements should be assessed by you for their full impact before they are implemented. The performance of our work is not and should not be taken as a substitute for management's responsibilities for the application of sound management practices. We emphasise that the responsibility for a sound system of internal controls and the prevention and detection of fraud and other irregularities rests with management and work performed by us should not be relied upon to identify all strengths and weaknesses in internal controls, nor relied upon to identify all circumstances of fraud or irregularity. Even sound systems of internal control can only provide reasonable and not absolute assurance and may not be proof against collusive fraud. Our procedures are designed to focus on areas as identified by management as being of greatest risk and significance and as such we rely on management to provide us full access to their accounting records and transactions for the purposes of our work and to ensure the authenticity of such material. Effective and timely implementation of our recommendations by management is important for the maintenance of a reliable internal control system.

### **Mazars Public Sector Internal Audit Limited**

#### **London**

#### **November 2016**

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