

Investigation of Roads Contract Management

Report by Chief Executive

1. Purpose of the Report

The purpose of this report is to update Members of the Audit Committee on the current position and planned next steps relating to the investigation of Roads Contract Management.

2. Background

Members will be aware of current rumours regarding allegations of impropriety within the Council relating to Roads Contract Management. It is clearly of great importance that the Council should investigate such allegations robustly and thoroughly for the following reasons:

- 1) To ensure that any poor practice or impropriety is exposed and to take appropriate action as a result, including, where appropriate, referral to Police Scotland;
- 2) To protect the public purse and ensure the integrity of the Council's use of public funds; and
- 3) To send a clear message to employees, contractors and potential contractors, and the public, that the Council has a zero tolerance approach to poor practice and impropriety and will act robustly to tackle and resolve it.

3. Current Position

Following serious allegations being raised by members of staff regarding suspected procurement irregularities, a Phase 1 full investigation of the allegations has been conducted by the Council's Internal Audit and Corporate Fraud team. This has involved:

- Carrying out an initial 'Table Top' exercise
- Detailed Open Source Internet searching
- Extensive review of information held on Council systems
- Performing detailed analysis of the actual spend and invoicing from specific companies
- Reviewing contract specific tendering processes
- Interviewing staff and relevant third parties
- Liaising with Police Scotland specialists (Economic Crime Unit)

The initial allegations raised by employees included an inappropriately close relationship between Contractors and Staff, work regularly being awarded to Contractors that could have been carried out by Council Staff, and Council equipment being used for non-Council jobs.

During the Phase 1 investigation, it was discovered that payments had been made to a Contractor not on the Procurement Framework and this amounted to £2.1M over a period of 7 years. No allegations were made relating to work not being carried out or subject to inflated invoices.

During the Phase 1 investigation, a Senior Manager resigned and is no longer employed by the Council. The Phase 2 work and the Chief Internal Auditor's recommendations will work towards ensuring Staff and Contractors maintain proper professional relationships.

Midlothian Council's External Auditors, EY, has performed an independent walk-through of the Internal Audit and Corporate Fraud team's Phase 1 work to confirm they are comfortable with the execution of the work undertaken to date against agreed scope; they also assisted with some of the senior level interviews to conclude Phase 1.

A Confidential Report of the findings from the Internal Audit and Corporate Fraud team Phase 1 work has been issued to Police Scotland. Due to the ongoing Police Investigation, this report will remain Confidential.

The Internal Audit and Corporate Fraud team Phase 1 work has identified weaknesses in relation to internal processes and procedures and the following are the Recommendations from the Chief Internal Auditor to address these weaknesses as a matter of urgency:

1. Review contract management procedures and controls ensuring that there are adequate segregation of duties and oversight / checking of compliance with the contract by Senior Management.
2. Review the roles and responsibilities of Senior Managers to ensure an adequate understanding, awareness and accountability for day-to-day activities undertaken in their areas of responsibility.
3. Provide regular training to all staff to promote an understanding and awareness of the implications of the Bribery Act 2010, potential corruption in the workplace and the Council's policy on Bribery & Corruption, and client/contractor relationships.
4. Instruct Staff involved in tendering contracts and allocating work to Contractors to read and acknowledge the Council's policies on Bribery & Corruption and Gifts & Hospitality.
5. Undertake, as part of the tendering process, due diligence checks on Contractors and document these checks. Instruct potential Contractors to read and acknowledge the Council's policies on Bribery & Corruption and Gifts & Hospitality.
6. Review and update policies across the Council including: Code of Conduct, the creation of a standalone Gifts and Hospitality Policy, Gifts and Hospitality Register, Register of Interests (to record and manage potential Conflict of Interests), and Secondary Employment. This should include appropriate authorisations (approvals and refusals) and the central recording of declarations to enable regular and discrete review (Gifts and Hospitality, Register of Interests, and Secondary Employment).

7. Review the process for approving and setting up new Suppliers on the payments database to enhance controls over creating a new Supplier.
8. Enhance ongoing monitoring and review of payments to Suppliers to complement the Budget Monitoring processes. This should involve regularly reviewing payments to Suppliers to ensure they reflect the Council's contract arrangements with Suppliers.
9. Introduce regular monitoring of the mix of in-house manpower, plant and equipment and third parties to optimise use of resources and demonstrate value for money in relevant Service areas (Senior Management and Elected Member oversight).
10. Review invoice payment processing to ensure that Staff are made aware of when counter signatories should be obtained and that the splitting of invoices to avoid this control is strictly forbidden. In addition, there should be adequate segregation of duties to ensure the same individual cannot award work, confirm it has been satisfactorily completed, and authorise payment of the invoice.
11. Introduce due diligence checks on Conflicts of Interest Declarations as part of the Procurement Tender process and review of documents.
12. Review the Asset Register and Fleet Management system to enable better recording of information and tracking of plant and equipment purchased by the Council. This should include a regular review of assets to ensure they can be accounted for.
13. Create procedures and guidance for Staff relating to the external hiring of Council equipment and jobs carried out for family, friends and colleagues (full costs to be met by Client).
14. Promote the Council's Whistleblowing policy and the mechanisms for raising concerns, anonymously if desired, for Staff and Public.

I would take this opportunity to reassure Members that all the Council's Senior Management are committed to resolve any procedural failings and to take all appropriate further actions. In the first instance, this includes engaging fully with Internal Audit and EY during Phase 2; an overview of which is set out below in next steps.

4. Next Steps

EY has been commissioned to perform Phase 2 in accordance with the following overview of scope:

- Performing detailed analysis of the actual spend in services focussing on reviewing the frameworks and contracts in place and comparing this to the suppliers where spend was made.
- Following initial analysis, target certain frameworks/contracts and perform detailed review to verify if the actual work specified and performed is consistent with the procurement decision. This work would involve reviewing the controls around the Council's procurement and contract management.

- Detailed testing on a risk based sample of suppliers to confirm if the spend was correctly authorised and performed.
- Business intelligence procedures performed on identified high risk suppliers to identify any conflicts of interest breaches.

Relevant audits within the 2018/19 planned Internal Audit assurance work will be carried out at the earliest opportunity to focus on areas of risk and to assess internal controls and governance. Furthermore, specific compliance and data matching work within the 2018/19 planned Corporate Fraud activity will be carried out at the earliest opportunity to assess fraud, theft, and corruption prevention and detection controls.

Officers and Members are reminded of the importance of maintaining confidentiality to preserve the Council's position going forward to enable the next steps to be concluded in a proper and thorough fashion through Internal Audit, EY and Police Scotland. Any media enquiries should be routed through the Council's Communications Team. Staff and the Public are reminded of the Council's whistle blowing policy and anonymous reporting facility.

5. Report Implications

5.1 Resource

At a high level for Phase 2, EY has estimated 46 days in total with a fee of £36k plus expenses. The Council's Internal Audit and Corporate Fraud team will continue to work with EY.

Whilst there is no provision in the Council budget to meet this cost it is nevertheless necessary to commission the phase 2 work. The additional cost of this will be reflected in the financial overview reports to Council.

5.2 Risk

It is anticipated that improvements in the management and mitigation of risks and enhancement of internal controls and governance will arise as a direct result of Management implementing the Internal Audit recommendations made arising from Phase 1 in a timely fashion.

5.3 Single Midlothian Plan

Themes addressed in this report:

- Community safety
- Adult health, care and housing
- Getting it right for every Midlothian child
- Improving opportunities in Midlothian
- Sustainable growth
- Business transformation and Best Value
- None of the above

5.4 Key Priorities within the Single Midlothian Plan

Midlothian Council and its Community Planning Partners include the following areas as key priorities under the Single Midlothian Plan:

- Reducing the gap in learning outcomes
- Reducing the gap in health outcomes
- Reducing the gap in economic circumstances

5.5 Impact on Performance and Outcomes

The Findings and Recommendations from Internal Audit and Corporate Fraud work during the year assists the Council in improving its performance and outcomes.

5.6 Adopting a Preventative Approach

Specific audits within the 2018/19 planned Internal Audit assurance work will include assessments on when a preventative approach can be adopted. Specific compliance and data matching work within the 2018/19 planned Corporate Fraud activity will assess fraud, theft, and corruption prevention and detection controls.

5.7 Involving Communities and Other Stakeholders

This report outlines the involvement of other stakeholders.

5.8 Ensuring Equalities

There are no equalities issues with regard to this report.

5.9 Supporting Sustainable Development

There are no sustainability issues with regard to this report.

5.10 IT Issues

There are no IT issues with regard to this report.

6. Recommendations

The Audit Committee is therefore asked to note the current position and planned next steps relating to the investigation of Roads Contract Management.

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