

EAST RENFREWSHIRE COUNCILAUDIT & SCRUTINY COMMITTEE20 June 2019Report by Director of EnvironmentARBORICULTURAL FRAMEWORK**PURPOSE OF REPORT**

1. To advise the Audit & Scrutiny Committee on matters arising in connection with the Council's Arboricultural Framework Agreement, during the period 1 March 2017 to 20 October 2017 and the subsequent actions taken by the Department in response.

RECOMMENDATIONS

2. That the Committee note the content of the report and the subsequent actions taken on behalf of the Council.

BACKGROUND

3. Framework agreements awarded by East Renfrewshire Council are for products or services supplied by one or more suppliers. Framework agreements are typically used where requirements are needed on a repetitive basis but the exact quantities are unknown.

4. Framework contracts can be awarded to more than one supplier for the same goods and services where there will be benefits to the Council. For example where urgent work is required access to a number of suppliers can be useful to ensure the work can be undertaken as quickly as possible. Where multiple suppliers are used it is best practice to rank the supplier to ensure transparency in which supplier is chosen for each piece of work.

5. Careful consideration and stringent procurement processes are applied to awarding a ranked framework. Suppliers within the framework are ranked 1, 2 and 3. Where it is specified that this ranking is to be applied in order to select a supplier, the first ranked contractor must be contacted in every case. It is only where the first supplier cannot meet the Council's requirement that the second or third ranked contractor is contacted.

6. On 1 March 2017, the Council established a recognised framework to support the procurement of Arboricultural (Tree) works. This framework was established to ensure best value and transparency was applied to any arboricultural works to be undertaken by East Renfrewshire Council. The framework was to run until 29 February 2020 with the option to extend for an additional 12 months.

7. In relation to the Arboricultural Framework within East Renfrewshire Council, three contractors were ranked in the following order as at (1 March 2017):

- 1st – Ayrshire Tree Surgeons
- 2nd – Premier Tree Surgeons
- 3rd – ISS Facility Services – Landscaping

REPORT

8. Following an internal audit report on risk management and corporate governance senior management within the Environment Department in October 2017 reviewed the arboricultural framework contract to ensure correct protocols were being followed. It became apparent on review that there were concerns about the allocation of works orders under this particular framework. This was subsequently reported to Internal Audit by the Director of Environment, as a matter of urgency. The matter was in due course referred to briefly by the Chief Auditor at the Audit and Scrutiny Committee in January 2018.

9. Investigations were conducted in the first instance by internal audit and secondly in accordance with the Council's Disciplinary procedures. The Head of Operations immediately put a hold on all further treeworks until they had been assessed by a qualified arborist, and were confirmed to be compliant with procurement procedures.

10. The Disciplinary Investigation confirmed that the total value of works carried out under the framework during the period in question was £290,000. During this period the first ranked contractor received 12 orders for work totalling £15,000. The second ranked contractor received 54 orders for work with a value of £275,000. Resulting in 95% of works orders being allocated to the second ranked contractor in the framework.

11. The investigation conducted by Internal Audit in the first instance identified that an estimated £50,000 of excess cost had been incurred by the council by incorrectly awarding work to the second ranked contractor. This was effectively due to the first ranked contractor having lower day rates.

12. In conclusion both investigations confirmed that Council procedures in the award of works orders under the framework were not complied with and that the second ranked contractor was continually awarded work, without any evidence to support the offer of works orders to the first contractor on the framework. Both investigations concluded that this action has resulted in best value not being achieved and the Council incurring additional costs as a result.

13. Consequently, Ayrshire Tree Surgeons also requested the Council investigate awarding of orders to the second ranked contractor. This then introduced additional risk and exposure to a potential legal challenge from the first ranked contractor. The Council subsequently received a formal notification of claim from the first ranked contractor's solicitors, the value of that claim being £168,000.

14. The Council appointed a Forensic Accountant to assess the veracity of this claim, and in conjunction with the Chief Solicitor, that claim has now been settled at £102,000.

15. The claim was not covered by the Council's insurers. Although approaches were made to the Council's insurers in respect of the claim they declined to deal with it on the basis that the losses were outwith the coverage of the relevant policies, consequential loss being excluded from the fidelity policy and 3rd party contractual claims being outwith the scope of the professional indemnity coverage.

CONCLUSION

16. The Council has settled a claim of £102,000 in favour of the first ranked contractor. This amount has been absorbed within the 2018/19 Neighbourhood Services budget through carefully managed underspends in other areas. It will not affect the 2019/20 Parks budget.

17. In addition an estimated £50,000 of excess cost was incurred by the Council as a result of malpractice.

18. It is important that the Committee are made aware of this loss to the Council and also the circumstances behind it. The delay in reporting to Committee was firstly due to the ongoing disciplinary case, then subsequently the financial claim against the Council and then the Employment Tribunal. A report during any of these cases may have been prejudicial to their outcome.

ACTION TAKEN & LESSONS LEARNED

19. Following the conclusion of internal investigations, disciplinary Action was taken in this case and the individual responsible for misallocating the works orders has been subsequently dismissed from Council service on the grounds of Gross Misconduct. An Appeal Hearing against the dismissal was held on Friday 16th November 2018, and the Appeals Panel upheld the decision to dismiss the appellant. The employee then filed for an Employment Tribunal which was intended to be held in the last week of April 2019. The employee failed to attend the Tribunal and the case against the Council has been dismissed.

20. The Senior Management team within the Department have as a result of this breach reviewed internal process and procedure in order to mitigate any risk of recurrence. Enhanced checks and protocols have been established and all recommendations from Internal Audit have been applied (Appendix 1).

RECOMMENDATION

21. That the Committee note the content of the report and the subsequent actions taken on behalf of the Council.

Further details can be obtained from Andrew Corry, Head Operations, Environment

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APPENDIX 1

ACTION PLAN

Risk Ratings for Recommendations	
High	<ul style="list-style-type: none"> • Key controls absent, not being operated as designed or could be improved and could impact on the organisation as a whole. • Corrective action must be taken and should start immediately.
Medium	<ul style="list-style-type: none"> • There are areas of control weakness which may be individually significant controls but unlikely to affect the organisation as a whole. • Corrective action should be taken within a reasonable timescale.
Low	<ul style="list-style-type: none"> • Area is generally well controlled or minor control improvements needed. • Lower level controls absent, not being operated as designed or could be improved
Efficiency	<ul style="list-style-type: none"> • These recommendations are made for the purposes of improving efficiency, digitalisation or reducing duplication of effort to separately identify them from recommendations which are more compliance based or good practice.

Ref.	Recommendation	Risk Rating	Accepted Yes/No	Comments (if appropriate)	Officer Responsible	Timescale for completion
4.1.1	<i>A more effective system of separation of duties should be put in place which genuinely prevents one person, even in areas of specialisation, from having control of the majority of the process. Specifically, the AO should be excluded from being involved in verification for the GRN process which allows the invoice to be paid.</i>	High	YES	Supervisor to visit site, obtain quote and complete purchase request form with quote attached. Admin to process PO. Manager to approve. 2 nd Supervisor to inspect work is complete and advise admin. Admin to grn and process invoice.	JB	01/02/18

Ref.	Recommendation	Risk Rating	Accepted Yes/No	Comments (if appropriate)	Officer Responsible	Timescale for completion
				In practice emergency works could not be carried out using this procedure. Once works carried out remainder of process will be carried out and double checked that all work down within framework agreement prior to grn.		
4.2.1	<i>The authoriser of the purchase order should check all aspects of the purchase order prior to applying authorisation, even on a spot-check basis.</i>	Medium	YES	Agree	JB	01/02/18
4.2.2	<i>A written procedure checklist should be established detailing what should be checked before a purchase order is authorised.</i>	Low		N/A	Chief Officer - Legal	
4.2.3	<i>Consideration should be given to incorporating a verification process into the purchase order module of the e-fins process to give assurance that procedures had been complied with, for example, the ranking has been applied.</i>	Low		N/A	Head of Accountancy	
4.3.1	<i>Quotations must be obtained from the contractor prior to the work being carried out and should clearly state the estimated</i>	Medium	YES	As 4.1.1. Quote must be obtained which should state works	JB	01/02/18

Ref.	Recommendation	Risk Rating	Accepted Yes/No	Comments (if appropriate)	Officer Responsible	Timescale for completion
	<i>number of days to complete the works and the total cost.</i>			being carried out, no. of days, machinery being used and cost of works. This should refer back to contractual rates. Shopping list will be obtained at next contract review meeting. Agreed as per 4.1.1 emergency procedure will be exempt.		
4.3.2	<i>Purchase orders must only be raised on receipt of the quotation and prior to the work commencing.</i>	Medium	YES	See 4.1.1. Agreed emergency works procedure exempt.	JB	01/02/18
4.3.3	<i>An improved audit trail should be established which better demonstrates how the number of days required was established and consequently the price for the job.</i>	Medium	YES	Detailed quote will be provided covering works being carried out. New procedure will mean two officers overlooking.	JB	01/02/18
4.3.4	<i>The GIS system could be better utilised for the purpose of pinpointing exact location, particularly where the work is located within parkland areas.</i>	Medium	NO	New procedure will make this irrelevant as location will have been established and full description of works will be given in quote.		

Ref.	Recommendation	Risk Rating	Accepted Yes/No	Comments (if appropriate)	Officer Responsible	Timescale for completion
4.3.5	<i>A column could be added to the existing handwritten purchase order form to show the source of each job requiring to be done.</i>	Medium	YES	Purchase request form will be amended to include source.	GB	01/03/18
4.3.6	<i>To comply with contract standing orders, purchase orders must be issued at the time of acceptance of any tender, Quick Quote or award of contract, the procuring department must issue a corresponding purchase order.</i>	Medium	YES	PO will only be issued after full quotation received.	JB	01/02/18
4.4.1	<i>Invoices should only be authorised for payment if the prices agree to rates as quoted in the tender.</i>	High	YES	Agree	JB	01/02/18
4.4.2	<i>Contractors should be requested to state the number of days for which they are charging the daily rate so it is clear how the total amount payable is calculated.</i>	Medium	YES	Quote should be obtained within 1 working day of commencement of emergency works.	JB	01/02/18
4.5.1	<i>Future contracts should make clear without any scope for difference of interpretation whether any charges for equipment will be allowed in addition to the daily rate or whether the daily rate must include every single piece of equipment required. If specialist equipment can be the subject of an additional charge, this should be provided by quote.</i>	Medium	YES	Additional costs must be approved at time of quote by senior officer. Future contracts will be written more clearly to cover this, including a schedule of rates for standard additional machinery. Non- standard	JB	As required

Ref.	Recommendation	Risk Rating	Accepted Yes/No	Comments (if appropriate)	Officer Responsible	Timescale for completion
				specialised equipment charges will need to be agreed with department.		
4.5.2	<i>Contractors within the current contract should be advised that no costs for specialist equipment additional to the daily rate will be paid unless this is agreed in writing in advance.</i>	Medium	YES	This will only be in place until this contract expires.	JB	
4.6.1	<i>Regular checks should be carried out by management to ensure that all work is being awarded to the correct contractors in compliance with framework or other contracts in place</i>	High	YES	Purchase request form will be altered to include a declaration that all procurement processes have been followed. Copy of amended request form will be sent to audit showing this has covered the recommendation. Spot checks will take place. Written procedures will be put in place/e-mail evidence to deal with refused work from Number 1 contractor.	GB	01/03/18

Ref.	Recommendation	Risk Rating	Accepted Yes/No	Comments (if appropriate)	Officer Responsible	Timescale for completion
4.7.1	<i>A procedure should be established as to how other services of the Council can access the arboricultural framework.</i>	Low	YES	Guidance should be issued to other services within the council on tree work framework and how this can be accessed.	Director of Environment	TBC
4.8.1	<i>To ensure expenditure is correctly reflected in the ledger to assist budget monitoring, regular checks on a sample basis should be carried out to ensure that invoices are correctly coded.</i>	Low		N/A	Head of Accountancy	
4.9.1	<i>In accordance with the Council's Scheme of Travelling Expenses and Subsistence Allowances, officers authorising mileage claims should periodically formally check a claim to ensure that the mileage is reasonable using for example mileage calculators such as the one at the AA.com or on the council intranet.</i>	Low	YES	Authorising manager will require carrying out periodic spot checks.	JB	Ongoing
4.10.1	<i>All of the source documentation stating that work has been carried out should be retained.</i>	Medium	YES	Retain in digital/paper format	GB	Ongoing
4.11.1	<i>The special condition of contract requiring contractors to submit quarterly reports detailing all orders received should be complied with and reminders issued to contractors in the event of the information not being provided timeously.</i>	Low		N/A	Chief Officer - Legal	