Swindon Internal Audit Services

Compliance with Contract Standing Orders

January 2018

FINAL

Contents and Distribution

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Report Distribution – Final Report issued on 12th January 2018 to:

Director of Law and Democratic Services
Procurement Manager
Corporate Director: Resources and Growth
Principal Solicitor
Corporate Director of Children's Services
Director of Finance
Head of Performance, People and Engagement.
Head of Corporate Programmes and Innovation

Auditors:

Principal Auditor
Auditor

Executive Summary

Background

This audit is intended to provide assurance to the Director of Law and Democratic Services that the Council's Contract Standing Orders are being complied with and that the Council is not at risk of legal challenge or a breach of the EU Procurement Regulations.

On the 21st October 2015, a Cabinet report, produced by the Director of Law and Democratic Services, set out a proposal to adopt revisions to the Council's Contract Standing Orders. These proposals reflected changes in legislation, best practice and statutory requirements. An overview of the Contract Standing Orders relating to procurement are set out in Appendix C 'How to Buy'. Cabinet approved the revised Contract Standing Orders and these took effect from 1st November 2015.

The Director of Law and Democratic Services in the report to Cabinet stated that '*as the volume and diversity of works, services and supplies, procurement activity and the complexity of the partnering arrangements around service provision increase the Council's existing processes need to become more flexible to ensure that staff are spending the majority of their time driving the best solution and value for the organisation rather than managing the process and keeping people informed*.'

Audit Opinion

The impact and materiality of Contract Standing Orders is considered to be **high** and combined with the Auditor's opinion that **significant improvements** are required in control procedures, gives an overall risk assessment to the Council of **'of concern'**.

Key Messages

Contract Standing Orders set out the requirements, including the EU Procurement Regulations that must be upheld to ensure that the Council's procurement arrangements are legal. These form part of the Council's constitution. The revised Contract Standing Orders have rationalised and simplified the financial thresholds at which tenders are required. For services and supplies the tender limit has been aligned to the EU Procurement limit of £164,176 but for works a tender limit has been set at a level below the EU limit i.e. £500,000. Compliance with Contract Standing Orders will ensure that the Council meets the legal requirements of the EU Procurement Regulations.

Audit testing of works, services and supplies paid via the Oracle Financial system, found eleven of thirteen suppliers were procured in breach of Contract Standing Orders and eight of these were also in breach of the EU Procurement Regulations. In these instances there were no contracts or best value justifications in place to support the procurement. Further testing of compliance against the revised Contract Standing Orders for works contracts was undertaken in the Housing Capital Programme Delivery audit. The programme budget for 2015/16 was £16.9m plus an additional £9m of underspend which was carried forward from 2014/15. The audit included sample testing of twenty-two live works contracts. In October 2016 the Housing Capital Programme Delivery audit report identified significant overspends against five contracts and their internal forms of approval, ranging from £40,000 to £522,859, but all procurements were EU

Procurement Regulation compliant. The auditor identified fundamental weaknesses in the process, resulting in a 'significant risk' audit opinion. In a follow-up of this audit, conducted in February 2017, the procurement of works were found to be compliant with Contract Standing Orders and the overall level of audit opinion improved to 'significant improvements required' and an 'of concern' risk opinion.

A survey by the auditor of officers involved at different stages of the above procurements was carried out to establish the awareness and application of the Council's revised Contract Standing Orders. Nine officers participated in the survey and 22% of these Officers rated their knowledge of Contract Standing Orders as good. However, the findings above demonstrate a low level of compliance which exposes the Council to the risk of legal and commercial challenge, financial penalty and reputation damage. This also compromises the Council's ability to demonstrate value for money.

Considerable guidance and training has been and continues to be made available to commissioners in procuring works, services and supplies. Procurement Surgeries (comprising of officers representing Procurement, Finance and Legal functions) have been introduced and are run twice a week (subject to there being a need). Officers advised that they found the new surgeries helpful in dealing with both exemptions to Contract Standing Orders including single source specialists, unforeseen emergencies and the formal approval of contract extensions. The terms of reference for the Procurement Surgeries were reviewed during this audit and they currently do not require escalation of any procurement non-compliance with Contract Standing Orders and EU Procurement Regulations, to the relevant Head of Service or Director of Law and Democratic Services. There is a lack of a monitoring of decisions made at the Procurement Surgeries to ensure that any actions agreed to address emerging risks and issues have been discharged.

A report of total spends by supplier and financial period is available from the Oracle Financial System from which to monitor compliance with approved values of spend (Form C/Procurement Authorisation Document) and the EU Procurement Regulations. However, due to a lack of Procurement team resource this check is not performed on a regular basis to provide assurance regarding compliance. The current release of the Oracle Financials System, Accounts Payables, used by the Council does not include a commitment accounting function. There are no automatic alerts reported to highlight spend which is nearing the approved Procurement Approval Document value or where this may have been exceeded.

The auditor concluded that stronger rigour is needed around the basic principles of procurement practice and recommends mandatory training in the Procurement Toolkit for all commissioning officers.

Context

Payment data from the Council's Oracle Financial System, Accounts Payable was analysed for the financial years 2015/16 (£412 million of payments over 134,000 invoices) and 2016/17 (April to October 2016, £226m of payments over 72,000 invoices). A sample of suppliers was taken to test compliance with Contract Standing Orders/EU Procurement Regulations with effect from 1st November 2015.

It is acknowledged that the value of account payable transactions includes transactions which are not attributed to suppliers i.e. payment of statutory deductions from payroll including PAYE, National Insurance, Pension contributions, also payment of grants and school settlements etc. Therefore, it was not possible to differentiate the value of payments made purely to suppliers but it is anticipated these account for more than 50% of the overall annual value of accounts payable transactions.

The Council used a Form C document as the internal form of approval for procurement before the process was simplified from 1st November 2015 in the form of a Procurement Approval Document. Along with this change, the threshold values were increased so any procurement under £25,000 for goods or service did not require procurement scrutiny and could be completed with a sole quote. The simplified process also stated that goods or services valued above £164,176 and works above £4.1m require a full EU tender process. Services and supplies are subject to the Gateway Procedure at the EU Procurement threshold value and works subject to the process at £500,000. Health, social and related services are covered by the EU Procurement Regulations, Light Touch Regime, with a financial threshold exceeding £638,467. Any services procured below this value are not required to be registered in the Official Journal of the European Union (OJEU).

The simplified process is also accompanied by Procurement Surgeries where contract variations and overspends can be discussed / authorised by Officers from Procurement, Finance and Legal.

Risk Areas Examined and Findings

In accordance with best practice, a risk-based approach was adopted that identified the key risks to the business objectives and those mitigating actions/controls that should be in place. The auditor then assessed the effectiveness of the mitigating controls through examination of relevant documents, procedures and detailed testing.

The key risks to the achievement of the business objectives were discussed and agreed with the Director of Law and Democratic Services before the commencement of the audit. The table below summarises the Risk Areas examined during the review and provides an assessment of the adequacy of controls in place for each area of risk examined:

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Risk Area Examined and Findings	*Audit Conclusion*
Risk: Breach of EU Procurement Regulations and Contract Standing Orders • Contract Standing Orders set out the requirements, including the EU Procurement Regulations that must be upheld to ensure that the Council's procurement arrangements are legal. These are embodied in the constitution of the Council. • Testing of works, services and supplies paid via the Oracle Financial system, found eleven of thirteen suppliers were procured in breach of Contract Standing Orders and eight of these were also in breach of the EU Procurement Regulations. In these instances there were no contracts or best value justifications in place to support the procurement. • Considerable guidance and training has been and continues to be made available to commissioners in procuring works, services and supplies. However, from testing a low level of awareness and application to ensure compliance has been observed. • The new Procurement Surgeries offer a good means of procurement support to commissioning officers i.e. in securing compliant procurement resolutions for contract exemptions and contract extensions. • Standard procurement documentation published on the Intranet does not include monitoring of spend against the Procurement Authorisation Document approved value with a record of any formally approved contract extensions/variations and/or Cabinet Member Briefing/Decision Notes to provide an overview and control document for procurement. • A standard and consistent approach to contract monitoring is not in place to promote and ensure compliance with Contract Standing Orders and EU Procurement Regulations.	**Significant improvements required**

Overall Opinion

Materiality and Impact: **High.** Materiality is high, with £412 million of spend in the 2015/16 financial year. Spend covers a range of works, services and supply procurements and represents a wide range of contracts across service areas including Housing Property Maintenance, Passenger Transport and Children's and Adults Services. The impact is also considered to be high based on the possibility of a breach in European Union (EU) Procurement Regulations and other legislation. This brings the risk of a commercial challenge on the Council in the event of improper procurement procedures being proven and risk of a financial penalty being imposed. In the event of poor procurement practice the Council is also exposed to the risk of fraud, corruption and bribery.

Opinion on system controls: **Significant improvements required.** The auditor completing the review concluded that existing procedures needed to be improved to ensure that they are fully reliable. A number of significant recommendations have been made to improve missing or failing controls.

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Overall Assessment of Risk: the combination of the high impact of the system, along with the opinion on the system controls gives an overall risk assessment to the Council as being **'of concern'**:

		MATERIALITY AND IMPACT		
SYSTEM CONTROL		High	Medium	Low
1	High standard	Moderate	Minimal	Minimal
2	Satisfactory	Moderate	Moderate	Minimal
3	Significant improvements required	Of concern	Moderate	Moderate
4	Fundamental weaknesses identified	Significant	Of concern	Moderate

Action Plan

The purpose of this action plan is to provide a summary of the matters arising during the audit of Compliance with Contract Standing Orders, together with the recommendations to mitigate risks, the manager's response to the recommendations, along with the officer responsible and timescale for implementation. In order for you to identify the most significant matters arising, which affect the reliance that can be placed on the controls reviewed, the recommendations have been prioritised.

Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
1	***Risk: Breach of European Union Procurement Regulations and Contract Standing Orders***			
1.1	A sample of thirteen procurements made since the change in Standing orders (approximately £5 million in value), across a range of services and supplies, but not works was tested. Details of the findings are included in Appendix D and are summarised below: • Two supplies tested (Jadu: £1,000 spend and King Edward Care Home: £1million spend were compliant with Contract Standing Orders and EU Procurement Regulations where required in the higher spend case. • Eleven supplies procured across a range of service areas were in breach of Contract Standing Orders as the expenditure was not supported by a Procurement Authorisation Document (PAD) for either a single procurement or where multiple orders have been placed for a value below £5,000. In these cases there were also no compliant contracts or value for money justifications approved to support the procurement approach. For five of these procurements there was also a breach of the EU Procurement Regulations where the aggregate value of spend over a 48 month period exceeded the relevant works, services or supply threshold value. Two procurements were also close to the EU Procurement Regulation supply threshold limit and if the supply continues then an EU compliant tender would be required.	Implement the recommendations from this review to facilitate compliance with EU Procurement Regulations and the Council's Contract Standing Orders. **Priority: High**	As set in action plan below.	**Agreed**

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Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
1	***Risk: Breach of European Union Procurement Regulations and Contract Standing Orders***			
1.2	**Awareness and application of the new Contract Standing Orders** Nine budget managers/officers who can authorise procurement returned an audit survey regarding their awareness and application of the revised Contract Standing Orders. The results are summarised below: • 22% rated their awareness of Contract Standing Orders as good. • 11% stated that they had received training on the procurement process. • 100% were aware of where to find guidance on the procurement process. • 66% were aware of the November 2015 procurement simplifications. • 55% had used the revised Procurement Authorisation Document. • 55% were aware of how to calculate whether procurement spend was in compliance with EU Procurement Regulations. • 55% were aware of the new contract variations. • 11% were aware of how to apply permitted overspend. The Auditor found that the Procurement Team were proactive in offering training to staff with high spend levels but this was not always taken up. 74% of officers accepted invitations for training however discussions with the Procurement Manager identified that turnout was much lower.	Relevant budget managers and any Officers with delegated procurement responsibilities should be required to undertake training of the requirements of the online Procurement Toolkit. Any procurement queries should be forwarded to the Procurement team and/or the Procurement Surgeries for resolution. Evaluate using the On-line Procurement Toolkit as an online e-training module for procurement best practice and to improve awareness and understanding of Contract Standing Order and the EU Procurement Regulations. Evaluate using the staff communications newsletter to publicise bite size updates of Contract Standing Orders and EU Procurement Regulations to update staff on key changes including the new Procurement Surgeries. **Priority: High**	Procurement Manager and Director of Law and Democratic Services March 2018	**Partially Agreed** <u>Procurement Manager</u> We have concerns over impact to current 'procurement' workload for both training and bite size updates. We have made some amendments to the website to make the toolkit more easily accessible and undertake the design on line training module. Separate training for commissioners relating to contract terms is planned.

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Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
1	***Risk: Breach of European Union Procurement Regulations and Contract Standing Orders***			
1.3	**Contract monitoring.** Following the testing carried out it is the auditor's view that the breach of Contract Standing Orders and EU Procurement Regulations is due, in the main, to a poor level of awareness leading to a high level of non-compliance with these requirements. There is no consistent or standard approach at a local or corporate level to monitor spend to ensure this does not exceed current contract approvals or that appropriate contracts support spend.	A standard and consistent approach to contract monitoring should be agreed, published then issued to all relevant officers responsible for procurement activities. This would help to ensure compliance with EU regulations, Council Contract Standing Orders as well as improving contract management.	Head of Corporate Programmes and Innovation as part of the Commissioning and Procurement work stream March 2018	**Agreed**
		The Procurement Authorisation Document standard template document should be extended to include monitoring of spend against the approved value with a record of any formally approved contract extensions/variations. This should ensure that: • as part of the monthly budget monitoring process the budget manager demonstrates to the Finance Manager that spend does not exceed the value of individual current contract awards. • any contract extension provided within contracts is triggered and formally notified to suppliers in advance of supply, • where the aggregate value of spend with a supplier is not subject to an EU Procurement Regulation contract i.e. works (£4,104,394), services or supplies (£164,176) or health, social and related services with the Light Touch Regime (£638,467) the supply must not exceed this value. An EU Procurement Regulation compliant tender process should be triggered to ensure that future supply is complaint	Procurement Manager February 2018	**Agreed** Currently a dashboard is being reported to the Corporate Management Team for non-compliant contracts in excess of £250k annual.
		Reference should be made to the Procurement Surgery for advice and guidance in the event of queries or emerging procurement issues/risks. **Priority: High**	Budget Managers / procurement initiating officer in conjunction with relevant service Finance Manager February 2018	**Agreed**

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Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
1	***Risk: Breach of European Union Procurement Regulations and Contract Standing Orders***			
1.4	**Application of Procurement Surgeries** The terms of reference for the Procurement Surgeries do not include reference to how persistent non-compliance (with EU Regulations and/or Council Standing Orders), by a commissioner would be dealt with and escalated.	The terms of reference for the Procurement Surgeries should be revised. This is to ensure that any non-compliance with Contract Standing Orders and/or EU Procurement Regulations which is not resolved through the Procurement Surgeries should, in the first instance, be referred to the relevant Head of Service relating to the procurement. In the event of persistent non-compliance the issue should then be escalated to the Director of Law and Democratic Services. **Priority: High**	Procurement Manager in conjunction with the Director of Law and Democratic Services February 2018	**Agreed** on the basis that this is limited to non-compliance that has been escalated / identified at the surgeries as there is no proactive monitoring of non-compliance due to resourcing constraints.
1.5	**On-line Procurement Toolkit 'library'** At the time of review the on-line procurement Toolkit did not contain all the relevant documentation in one location for easy access and reference.	The On-line Procurement Toolkit 'library' should be updated to include all relevant documentation within one location for ease of access. **Priority: Medium**	Procurement Manager January 2018	**Agreed and achieved** Amendments have been made to the procurement toolkit.

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Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
1	***Risk: Breach of European Union Procurement Regulations and Contract Standing Orders***			
1.6	**Recruitment of temporary staff** The recruitment of temporary Social Workers and Managers for Children's Services was approved by a Cabinet Members Decision Note (CMBN) to be procured from agencies other than Pertemps, the Council's corporate contract provider. The CMBN approved the arrangement for the period July 2014 to July 2015 with a review of temporary recruitment arrangements required at the end of this period. However, these arrangements have continued and are currently subject to a review led by the Head of People Development, including review of the corporate temporary recruitment contract with Pertemps. From 1st November 2015 to 31st October 2016 a combined value of £1,469,351 has been spent with Supplier A (£444,564), Supplier B (£769,164) and Supplier C (£144,723) for the supply of temporary Social Workers and Manager for Children's Services. **I**n excess of £3.6m has been incurred with these agencies between July 2014 and October 2016. Please see appendix E and F for details. The (previous) Corporate Director of Children's Services advised the Auditor that other agencies are also used for sourcing temporary social care staff for her service. Individual temporary staff appointments made under these arrangements has been subject to a 'Request to Fill' approval process with pay based on rates agreed through a Memorandum of Co-operation. These vacancies are presented to Pertemps to fill, but if this is not satisfied the vacancy is referred to agencies outside of the Corporate Contract which have declined to operate as second tier providers to the Pertemps contract. The latest value of spend exceeds the threshold limit of £638,467 for health, social and related services. The Cabinet Member Briefing Note should have been	An EU Procurement Regulation compliant contract should be put in place to ensure continuity of supply of temporary staff. In the short term and to speed up this process, evaluate the option of using recruitment framework agreements for temporary staffing already in place with other local authorities i.e. Bristol City Council staff recruitment framework. Evaluate performance of the Pertemps contract in meeting the needs of the Council, particularly in recruiting temporary Social Workers and Managers, in specifying and contracting future arrangements. **Priority - High**	Director of Human Resources and Organisational Development and Head of Children, Families and Community Health April 2018	**Corporate Director of Children's Services:** I will work through a response, initially with the Head of Children, Families and Community Health and liaise with the Director of Human Resources and Organisational Dev. as appropriate. <u>Audit Comment</u> Spend during 2017/18 with the suppliers identified is anticipated to reach approximately £2m. This takes the aggregate spend with these non-contracted agencies to approximately £8m between 2014/15 and 2017/18. **Head of Children, Families and Community Health and the Director of Human Resources and Organisational Development:** There is a regional agreement in place, led by SBC, to ensure that agency spend on Social Workers Agency staff must comply with the agreed rates and social workers are unable to negotiate rates. There is close monitoring

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Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
	extended and in view of the eventual level of spend a Procurement Authorisation Document, Gateway Procurement Approval or advertising and award of a tender put in place in accordance with EU Procurement Regulations. This represents a breach of Contract Standing Orders and EU Procurement Regulations, Light Touch Regime with the value of spend exceeding the threshold limit of £589,148, for health, social and related services. A best value case for agency fees has not been made during the period of using agencies outside the corporate contract with Pertemps.			of off-contract spend. There is an ongoing wider piece of corporate work to look at a managed service for all non-permanent recruitment which will mitigate off contract spend. ESPO agreement – Pertemps 1 to May 2018 +1 year contract Managed service provider

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Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
1	***Risk: Breach of European Union Procurement Regulations and Contract Standing Orders***			
1.7	**Estate Management House clearance** Two suppliers are used by Housing Estate Management to provide a variety of services including property clearance and cleaning, home moves and garden works. This means that procurement represents a disaggregation of supply both by order value and by achieving the supply across suppliers. This has inadvertently avoided a procurement supported by both a Procurement Authorisation Document and an open market tested and contracted supply. The total value of spend with these suppliers between April 2014 to 31st October 2016 across the Council was £312,608, which exceeds the EU Procurement Regulations supply threshold limit of £164,176. Expenditure within the Housing Estate Management over this period was £151,281.24. Due to the repetitive nature of orders and long term use of these suppliers, for the same supply, an EU Compliant tender would be required to support the aggregate value of procurement.	Determine a single point for commissioning house clearance services for Housing Estate Management. As an interim measure produce a specification for house and garden clearance services and contract a supply through the South West Procurement Portal in accordance with Contract Standing Orders. Based on the assumption that spend on house-clearance will continue above the EU Procurement supply threshold, of £168,711 over four years, enter into an EU Procurement Regulation compliant contract through the South West Portal to following termination of the one year short-term contract. If support is required to tender this contract, reference should be sought from the Procurement Surgery. Additional resources are available on the intranet under business support/procuring for your business. **Priority - High**	Tenancy Services Manager March 2018	**Agreed** Initially looked at procurement as recommended. This is an area that Tenancy Services have no experience of so advice sought from colleagues in Property who specialise in procurement. Unfortunately they do not have the capacity to provide any support currently. Therefore discussions underway with the StreetSmart grounds maintenance team. They are in agreement that in future they will begin to undertake this work in-house. As the summer is their busiest time this change will take place from the autumn. It is believed that once this is in place it will leave a minimal spend with external contractors.

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Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
1	***Risk: Breach of European Union Procurement Regulations and Contract Standing Orders***			
1.8	**Stores, materials and equipment** Stores staff at the Waterside Depot have ordered materials/equipment on an ad-hoc basis using regular and low value orders with local suppliers' i.e. • one supplier has had £39,552 spend since November 2015 and; • another has £84,711 spend since November 2015. Procurement Authorisation Documents, contracts or a best value justification are not in place to support these procurements which are a breach of Contract Standing Orders. If the level of spend over this period is expected to continue then it is likely that this will exceed the EU Procurement Regulations threshold limit for supply of £164,711.	An analysis of Stores orders placed for materials and equipment should be conducted to determine the aggregate value of spend by category of materials or equipment in the last year. Where possible, bring together common categories of supply for materials and equipment to determine the estimated contract value that could be packaged. Where projected package values over a four-year period (period required to determine if an EU Procurement is applicable) are estimated to exceed £164,176, then an EU Complaint tender should be undertaken. If the period spend is projected below this threshold than Contract Standing Orders compliant contract should be procured through the South West Portal. **Priority – High**	Stores and Procurement Manager February 2018	**Agreed** A review of all spend going through the stores has been undertaken. Spend is now categorised by trade i.e. gas and plumbing supplies. Work has now started with the housing section to undertake a fully compliant procurement process. A timetable of procurement has been created.

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Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
1	***Risk: Breach of European Union Procurement Regulations and Contract Standing Orders***			
1.9	**Passenger Transport Services** From testing of invoice payments to the Council's Transport contractor it has not been possible to align spend with current contracts because transport routes within the large number of current contracts have changed and some contracts have expired. However, the value of spend with the contractor exceeds the level of Procurement Authorisation Document /contract approvals by more than £164,176 i.e. the trigger for an EU Procurement Regulation compliant contract. Contract extension notes were reviewed but nothing could be found relating to the contractor to support this additional spend. The Passenger Transport Manager has been requested on numerous occasions by the Auditor to provide details of transport contracts with the contractor, however this information request has been outstanding due to other service pressures. The Auditor referred this procurement to the Thursday Procurement Surgery for resolution. However, a month after attendance at the Procurement Surgery, the Passenger Transport Manager has yet to provide information required to review and resolve contracts, it is understood that this is due to on-going service pressures. In the meantime the value of supply with the contractor is not compliant with Contract Standing Orders or the EU Procurement Regulations. It is noted that existing Passenger Transport contracts are subject to set routes. If routes alter in response to the changing needs then the contract does not ensure flexibility and transparency of supply and costing of service.	Details of the Passenger Transport contacts and payments made to the contractor must be provided to the Procurement Surgery. This is to assist in putting in place a legally compliant contract. It may be possible to contract with the existing supplier, without going out to tender, on a value for money basis with rates applied from previous market tested contracts. In this instance an extension note and contract could be put in place as a short-term measure and a contract tendering process triggered to go to market with an EU Procurement Regulation complaint contract where necessary. With the assistance of the Procurement Surgery put in place a contract procurement plan to support compliance with Contract Standing Orders and the EU Procurement Regulations. Evaluate using a framework agreement for future Passenger Transport contracts for buses, mini-buses and taxis so that in the event of route changes there is flexibility and transparency of supply and costing of service. **Priority - High**	Passenger Transport Manager February 2018	**Agreed**

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Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
1	***Risk: Breach of European Union Procurement Regulations and Contract Standing Orders***			
1.10	**Relocation of staff and office refurbishment**. Following the decision to bring services delivered by SEQOL back into the Council in late 2016/17 many staff on the Civic Offices campus have been relocated to accommodate this move. The Project Management Office (PMO) has delivered the relocation of. A Procurement Authorisation Document (PAD) was completed for this move and a contractor selected. Expenditure with the supplier was in line with the contracted spend outlined within the procurement documentation. The refurbishment of Clarence House was a project delivered by the PMO during 2014-15 as part of a wider project of Stronger Together moves to deliver a range of office refurbishments and relocations. A procurement exercise was undertaken for the Clarence House aspects of the project, with a contract value of £105,450.80. A review of the Oracle code found total expenditure of £181,894.10. This followed a change to the phasing of the moves and additional paperwork which extended the initial procurement with Elm Office The over spend of this aspect of £76,443.30 was accommodated within the overall Stronger Together moves project. As part of these moves, the PMO used a different supplier to move office equipment and records between sites. However, it has also not been possible to establish Procurement Authorisation Document or contract documentation for this supply from either PMO or corporate procurement records. Whilst orders have been placed with this supplier previously they had not been subject to open market competition so the option of applying for a best value procurement through the Procurement Surgery was not available.	A Contract Standing Orders Compliant contract, advertised through the South West Procurement Portal, should be put in place for future furniture and office removal services. If demand for these services over a four-year period, are estimated to exceed £164,176, then an EU Complaint tender should be undertaken. **Priority - High**	Asset Transformation Delivery Lead March 2018	**Agreed** The recommendation is noted and the Swindon Programme is being developed and will incorporate any future phases of office and estates refurbishment. This will include ensuring appropriate contracts and procurement arrangements are implemented for the life of the project. Document retention policies and filing storage will also be reviewed and clarified to ensure effective mechanisms are in place.

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Ref.	Finding	Recommendation	Responsible Officer and Timescale	Management Response
1	***Risk: Breach of European Union Procurement Regulations and Contract Standing Orders***			
1.11	**Bristol Fire** Property Maintenance issue orders for statutory building fire compliance inspections and remedial works (up to £250 per job). The Building Statutory Service function was formerly delivered by Capita and none of the specialist suppliers appointed to carry out these services were tendered. Since return of the function to the Council this service has not been tendered or contracted and although this is expected to happen a date for this has not been set. A detailed specification is required to support this contracting process i.e. covering the specific requirements for all corporate buildings fire inspections and maintenance, but this is yet to be prepared. The value of payments made to this single supplier totalled £86,619 for the period between November 2015 and October 2016. This is made up of multiple orders each valued below £5,000. Based on the on-going need for this service the aggregate value of orders is expected to exceed the EU Procurement Regulations threshold for services, £164,711. Looking back on payments to this supplier £282,059 has been paid between 2014/15 and October 2016, representing a breach of the EU Procurement Regulations. A value for money justification for the continued appointment of this supplier is not in place or authorised to support this procurement.	A specification should be prepared for corporate building fire inspections to be conducted in the next year and a short-term tender put to market to ensure compliance with Contract Standing Orders. In the mean-time an EU Procurement Regulation compliant tender should be prepared and put to market with the start of supply to co-inside with the end of the short-term contract. **Priority - High**	Building Services Manager March 2018	**Agreed** Following the return of Capita Symonds work to the Council, a rationalisation of service provision has been conducted. This has resulted in a separation of work provided formally by a contractor with the Council's in-house direct labour conducting service and maintenance of fire panels in corporate and housing buildings. The provision of fire extinguishers and other firefighting equipment has been subject to market tender and awarded to another supplier. The remaining work for technical support and fault resolutions in high risk buildings including fire panel replacements i.e. David Murray John building continues to be placed with the contractor. This procurement will be referred to the procurement clinic to determine the best approach to the market and preparation of specifications.

APPENDIX A

Standard Audit Opinions	Standard Audit Opinion System Control
The audit opinion is based on two different criteria the first is materiality of the system and its impact on the Council if there was a system failure. This has been split into High, Medium or Low. The second criterion is the standard of control found within the system audited. This has been categorised into 4 different levels i.e. high; satisfactory; significant improvements required and fundamental weaknesses identified. Each of these categories has a standard opinion (see below). The combination of these two factors gives an overall risk assessment to the Council of one of four scores i.e. significant, of concern, moderate or minimal (see Overall Opinion section in the main report).	**Audit Opinion 1. *High standard*** The auditor completing the review concluded the significant controls are in place and operating effectively and only minor recommendations have been made
	Audit Opinion 2. *Satisfactory standard* The auditor completing the review concluded that most of the significant controls are in place and operating satisfactorily although some non-compliance was identified and therefore there is scope for improvement.
	Audit Opinion 3. Significant improvements required The auditor completing the review concluded that existing procedures needed to be improved to ensure that they are fully reliable. A number of significant recommendations have been made to improve missing or failing controls.
	Audit Opinion 4. Fundamental weaknesses identified The auditor completing the review concluded that the matters arising from the review are sufficiently significant to place doubt on the reliability of the procedures reviewed. Implementation of the recommendations made is a priority to ensure that reliance can be placed on the system.

Acknowledgements

Internal Audit would like to acknowledge and thank the following Officers who contributed to the review:

Job Title

Procurement Manager
Head of Property and Assets
Service Manager: Children Looked After
Building Services Manager
Grounds and Street Cleaning Service
Grounds Operations Manager
Neighbourhood Housing Manager
Chief Information Officer
Passenger Transport Manager
Social Work Team Manager, ACP/Family
Senior Procurement Officer
Commissioning, Placements and Specialist
Corporate Change Partner
Stores and Procurement Manager
Senior Project Manager
Accounts Payable Supervisor
Finance Business Partner
Finance Manager-Economy
Senior Programme Manager
Senior Project Manager
Assistant Project Manager
Project Manager

Swindon Internal Audit Services: Compliance with Contract Standing Orders

APPENDIX C

Procedure on 'How to Buy'

Procurement Requirement	Value	Procurement Process	Acceptable format for receipt of tenders/quotes	Officers present at opening	Formalities for Contract completion
All requirements	Up to £25,000	Under £1,000 - at least one verbal quotation Over £1,000 - at least one written quotation obtained. All requirements in excess of £5,000 must be recorded using the Procurement Authorisation Document. Best Value must be evidenced if only one quotation sought or received and the reasons recorded on self-certified **Authorisation Document.**	Approved E-tender system or Secure Electronic e-mail account or Hard copy paper format	One Officer	£5,000 - £25,000 Signature by two Officers
Goods and Services	Between £25,000 and *EU Procurement Thresholds	Invite at least three written quotations from the relevant industry (one if 'direct call off' only from an approved framework agreement). Recommend advertising to ensure suitable competition. Best Value must be evidenced if only one quotation/tender received or advertising is not applied and the reasons recorded on self-certified **Authorisation Document**.	Approved E-tender system or Secure Electronic e-mail account or Hard copy paper format	Minimum two Officers	Signature by two Officers including a Senior Officer
Works	Between £25,000 and £500,000	Invite at least three written quotations from relevant industry (one if 'direct call off' from an approved framework agreement). Recommend advertising to ensure suitable competition. Best Value must be evidenced if only one quotation/tender received or advertising is not applied and the reasons clearly recorded on self-certified **Authorisation Document**.	Approved E-tender system or Secure Electronic e-mail account or Hard copy paper format	Minimum two Officers	Signature by two Officers including a Senior Officer
Goods and Services	Above *EU Threshold	EU Compliant Tender process, procurement strategy must be approved through Gateway Procedure prior to tender. **Authorisation Document** must also be completed.	Approved E-tender system or Hard copy paper format which must be returned to the Director of Law and Democratic Services	Minimum two Officers, one of whom must be a Senior Officer	Contract Sealing by Director of Law and Democratic Services
Works	Between £500,000 and *EU Works threshold	Advertising is strongly advised. Alternatively, and if justification to not advertise can be evidenced, invite at least five written quotations from relevant industry. Best Value must be evidenced and the reasons recorded on self-certified **Authorisation Document** if advertising not undertaken. For all works contracts in excess of £500,000 Procurement strategy must be approved through Gateway Procedure prior to tender.	Approved E-tender system or Hard copy paper format which must be returned to the Director of Law and Democratic Services	Minimum two Officers, one of whom must be a Senior Officer	Contract Sealing by Director of Law and Democratic Services
Works	Above *EU Threshold	EU Compliant Tender process, procurement strategy must be approved through Gateway Procedure prior to tender. **Authorisation Document** must also be completed.	Approved E-tender system or Hard copy paper format which must be returned to the Director of Law and Democratic Services	Minimum two Officers, one of whom must be a Senior Officer	Contract Sealing by Director of Law and Democratic Services

Swindon Internal Audit Services: Compliance with Contract Standing Orders

APPENDIX D

Summary of Testing for Compliance with Contract Standing Orders

	Company Name	Spend 2014/15	Spend before 13/11/15	Total Spend Before Updated CSO	Spend after 13/11/16 (updated CSO)	Spend Apr-October 2016	Total Spend since the Revised CSO came into effect	Spend before and after CSO review	EU Procurement Regulation Compliant	Is there a PAD in place?	Is there a contract in place?	Disaggregation of spend, individual transaction below £5000	Cabinet Member Briefing Note	Audit Comments
2	John Edwards Care Home Ltd	£ 924,208.46	£ 588,917.72	£ 1,513,126.18	£ 381,741.23	£ 685,898.19	£ 1,067,639.42	£ 2,580,765.60	✓	✓	✓	No	✓	CMBN in place since 17/10/11 however previously exempt from EU Regs until changes in the Regulations from Feb 2015. Gateway 3 paper currently with Legal as supplier now part of framework. PAD retrospectively completed for framework and dated back to April 2016. OJEU with framework mini-bid.
3	Bristol Fire	£ 107,838.37	£ 87,601.14	£ 195,439.51	£ 40,877.23	£ 45,742.47	£ 86,619.70	£ 282,059.21	×	×	×	Yes	N/A	The supply was initailly procured by Capita, however following return of the service to Property Services it has not yet been subject to tender.
4	Les Jennings	£ 77,373.77	£ 44,715.91	£ 122,089.68	£ 28,932.57	£ 44,220.65	£ 73,153.22	£ 195,242.90	×	×	×	Yes	N/A	There is disaggregation of low value and high frequency orders placed across the two suppliers for the same service. This is in breach of Contract Standing Orders and the EU Procurement Regulations.
5	The Odd Couple Cleaning Services	£ 31,562.04	£ 28,924.00	£ 60,486.04	£ 16,812.00	£ 40,068.00	£ 56,880.00	£ 117,366.04		×	×	Yes	N/A	
6	Elm Office Products Ltd	£ 136,194.80	£ 74,926.95	£ 211,121.75	£ 66,393.50	£ 11,160.00	£ 77,553.50	£ 288,675.25	Expenditure through the financial year 2014/15 for the Clarence House move came to a total of £181,894.10. The form C for the project stated a total authorised spend of £105,450.80. Due to this, there was an overspend on the project of £76,443.30. Expenditure through 2015/16 and 2016/17 was covered by the PAD's provided to the Auditor by the PMO team.					
7	Mister Shifter UK Ltd	£ 44,532.76	£ 54,714.25	£ 99,247.01	£ 28,564.57	£ 30,754.60	£ 59,319.17	£ 158,566.18	N/A	×	×	Yes	N/A	Single supplier not subject to market competition. At the time of review further staff relocation works were underway following the relocation of staff and return of staff from SEQOL in late 2016/17. Consequently, the total spend with this supplier is expected to exceed the EU Procurement Regulation supply threshold limit of £164,176.
8	Beesleys Tools	£ 1,447.64	£ 38,000.58	£ 39,448.22	£ 18,450.06	£ 21,102.23	£ 39,552.29	£ 79,000.51	N/A	×	×	Yes	N/A	Single supplier not subject to market competition.
9	Jadu Ltd	£ -	£ 75,900.00	£ 75,900.00	£ 1,000.00	£ -	£ 1,000.00	£ 76,900.00	N/A	✓	✓	No	N/A	Form C and contract in place with no overspend
10	Plumbase	£ 453.63	£ 47,243.65	£ 47,697.28	£ 37,616.33	£ 47,095.44	£ 84,711.77	£ 132,409.05	N/A	×	×	Yes	N/A	The supply comprises of a high number of low value orders below £5,000 from a single supplier.
11	Akcess CIC	£ 1,470,361.30	£ 1,068,598.28	£ 2,538,959.58	£ 685,109.26	£ 1,244,342.35	£ 1,929,451.61	£ 4,468,411.19	The value of spend with the supplier exceeds the level of current approvals (PAD and former Form C) and contracts required by Contract Standing Orders by more than £164, 176 which is the trigger for an EU Procurement Regulation compliant contract.					
12	Caritas Recruitment	£ 908,090.38	£ 640,218.45	£ 1,548,308.83	£ 252,698.40	£ 302,765.82	£ 555,464.22	£ 2,103,773.05	The use of these agencies date from a July 2014 Cabinet Member Briefing Note (CMBN). The CMBN approval ran for twelve months after which a review of the temporary recruitment arrangements was to be conducted in in July 2015. However, to date the use of these agencies continues and a review of the Corporate Temporary Recruitment Contract is underway by HR. Procurement Approval Documents support individual officer appointments with each agency, but a Contract Standing Orders and EU Procurement Regulations compliant procurement is not in place to support the use of these agencies with aggregate spend in excess of the EU Light Touch Regime threshold level of £638,467.					
13	Liquid Personnel	£ 188,947.57	£ 358,230.40	£ 547,177.97	£ 241,119.45	£ 528,044.58	£ 769,164.03	£ 1,316,342.00						
14	Nonstop Recruitment	0.00	£ 38,518.75	£ 38,518.75	£ 55,343.97	£ 89,379.51	£ 144,723.48	£ 183,242.23						
	Total Spend	£ 3,891,010.72	£ 3,146,510.08	£ 7,037,520.80	£ 1,854,658.57	£ 3,090,573.84	£ 4,945,232.41	£ 11,982,753.21						

Swindon Internal Audit Services: Compliance with Contract Standing Orders

APPENDIX E

Temporary staffing procured from suppliers outside of the Council's corporate recruitment contract with Pertemps. This is for the supply of temporary social workers and managers predominately to Children's Services.

	2014/15	2015/16	Apr-Oct 2016	Total Spend By Supplier
Caritas Recruitment	£ 908,090.38	£ 892,916.85	£ 302,765.82	£ 2,103,773.05
Liquid Personnel	£ 188,947.57	£ 599,349.85	£ 528,044.58	£ 1,316,342.00
Nonstop Recruitment	-	£ 93,862.72	£ 89,379.51	£ 183,242.23
Aggregate value of spend (31 months)				**£ 3,603,357.28**
Indicative value of spend over 48 months (EU Procurement Spend Determination				**£ 5,579,391.92**
EU Procurement Threshold applicable to Services				**£ 638,467.00**
Benchmarking to demonstrate best value as requirement of CSO on agency fees				
Pertemps	£ 3.50 per hour			
Caritas Recruitment	Regional cap means the Council can pay up to £31 per hour to social care agency staff. However, agency will negotiate their fee. There is a lack of transparency as a total cost per hour is provided by these agencies rather than a breakdown of wage and fee.			
Liquid Personnel				
Nonstop Recruitment				

Temporary staffing procured from suppliers outside of the Council's corporate recruitment contract with Pertemps. This is for the supply of temporary social workers and managers predominately to Children's Services continued.

Spend with one supplier, Caritas Recruitment, was supported by a Cabinet Member Briefing Note (CMBN) in July 2014. The CMBN gave exemption from Contract Standing Orders for sourcing temporary social care staffing from an agency other than Pertemps (which is appointed the Council's corporate recruitment contract) with an internal form of approval (Form C or Procurement Approval Document) required to be raised for each temporary member of staff recruited through this arrangement. This supply was put in place to provide an alternative recruitment route as the Pertemps was unable to provide suitable staffing to fulfil social care vacancies for the Council. In the normal course of events, where Pertemps is unable to source staff directly they would appoint 'second tier' suppliers through their contract with the Council, however it is understood from the Recruitment Business Partner that the social care temporary agencies refused this approach. The arrangement was to be reviewed within one year of the date of the CMBN i.e. July 2015, but the Auditor has been unable to find evidence of such a review.

The Director Children's Services, who raised the Lead Member Briefing Note (LMBN), advised that she would not conduct the procurement review for temporary staffing. Instead, she expected this to be addressed as part of a Council wide procurement exercise for temporary staffing arrangements. The Corporate contract with Pertemps is nearing the end of its term and HR is due to review this and the Council's temporary requirements going forward.

From an analysis of cost codes used to charge payments made to Caritas Recruitment it is evident that other staffing agencies have been used to source temporary social care staff i.e. from Liquid Personnel and Nonstop Recruitment. It is noted that these agencies are also being used by Adults Social Care, albeit to a smaller spend value that Children Services. From 2014/15 to October 2016 an aggregate value of £3.6 million has been spent on temporary staff sourced across the three agencies. This value of spend has exceeded the Light Touch Regime EU Procurement Regulation Limit of €750,000 (£638,467) and therefore the Council is in breach of this directive. In accordance with Contract Standing Orders, the supply of temporary staffing outside of the corporate Pertemps temporary recruitment contract should be subject to Gateway approval and have formal legal contracts in place, so there is also a breach of these Orders.

As a required by the LMBN, individual internal forms of approval (Form C or Procurement Approval Document) have been seen for a sample of these arrangements by the Auditor i.e. to support individual temporary social care placements procured from Caritas Recruitment. It is the Auditors opinion that Officers arranging temporary staff placements through this route perceive they are complying with both the Council's Contract Standing Orders and the EU Procurement Regulation as the value of supply for individual placements is below the EU services threshold limit and the internal gateway limit. The value of overall spend through the three employment agencies, other than Pertemps, is disaggregated and costs charged across a number of staffing budgets. The overall spend value of £3.6m is therefore not visible, monitored or managed as one procurement.