

External auditor's value for money opinion 2017-18 and response to findings of procurement weaknesses

To: Audit & Accounts Committee

Meeting Date: 25 November 2021

From: Director of Resources

Electoral division(s): All

Key decision: No

Outcome: The Committee will be informed of the external auditor's value for money opinion and the steps taken in response by the Council as a result of the weaknesses identified with procurement processes.

Recommendation: It is recommended that the Committee:

- a) Receives the report of the external auditor regarding their use of resources value for money opinion for 2017-18
- b) Notes and comments on the County Council's response to the findings, set out in this report
- c) Draws this matter to the attention of the Full Council in December, through this Committee's annual report

Officer contact:

Name: Tom Kelly
Post: Director of Resources
Email: Tom.Kelly@cambridgeshire.gov.uk
Tel: 01223 703599

Member contacts:

Names: Cllr G Wilson and Cllr N Gay
Post: Chair and Vice-Chair
Email: Graham.Wilson@cambridgeshire.gov.uk and Nick.Gay@cambridgeshire.gov.uk
Tel: 01223 706398

1. Background

- 1.1 Each year the independent external auditor is required to give an opinion on the County Council's use of resources and value for money. For 2017-18, the authority's then external auditor, BDO LLP, gave their opinion on the financial statements in August 2018, but stated that:

“As a consequence of the ongoing work necessary to conclude upon an objection to the financial statements received from a local elector, we have not yet been able to complete the work that we have determined necessary to form a view on whether, in all significant respects, Cambridgeshire County Council has put in place proper arrangements to secure economy, efficiency and effectiveness in its use of resources for the year ending 31 March 2018. We are therefore unable to report on this matter until our work in this area is complete.”

- 1.2 On 16 November 2021, the Council received a finalised report from BDO summarising the results of their value for money work for the year ended 31 March 2018. It is therefore anticipated the value for money opinion will be signed by BDO before the end of November 2021. The submission from BDO has been included in the agenda papers for this meeting, preceding this report. This report outlines the Council's comments and response to the findings.
- 1.3 This Committee has been concerned at the delays in concluding the 2017-18 value for money opinion, leading to a number of requests and prompts to bring about the finalisation of the work. This included formal exchange of letters between CCC and BDO, copied to PSAA Ltd as well as informal liaison, including from chief officers and the former Chairman of the Committee. BDO has acknowledged the extended period taken to reach this stage, and in their report issued in November 2021 reproduce earlier findings shared with the Committee in July 2018 as well as including updates to their understanding of these risks and the outcome of work undertaken.
- 1.4 In relation to two audit risks – sustainable use of resources and revenue generation – BDO's finding is that there are no issues identified that impact on their overall value for money conclusion. With respect to the procurement audit risk, BDO have concluded that they need to modify their opinion on an “except for” basis. Through this report, the Council sets out the steps it has already taken and identified as required to address the shortcomings highlighted by BDO.

2. Weaknesses in procurement arrangements

- 2.1 As part of their audit of use of resources and value for money, BDO selected a sample of items of expenditure and contracts in order to assess the Council's procurement arrangements. In their report, BDO outline that they sought legal advice as to whether there had been a failure by the Council to comply with procurement law in respect of any of the contracts reviewed. BDO's legal advice is that in two cases the Council is likely to have breached procurement law.

- 2.2 Firstly, in relation to winter gritting, the Council entered into a seven-year contract in 2015. Expenditure across the contract term amounts to £5.6m or approximately £0.8m per annum. BDO's report sets out the process the Council followed to seek multiple quotes and then informally consult with Members ahead of the contract being awarded. However, BDO have detected that in this case the Council did not follow its own Contract Procedure Rules, principally by failing to meet the statutory requirement to advertise the contract opportunity in the *Official Journal of the European Union*; to document (and retain) the appropriate internal exemptions and approvals for the procurement approach; or to seek a formal decision by Members at Committee. The Council recognises these are serious failings.
- 2.3 Although the procurement errors identified preceded the 2017-18 year under consideration, as this was a seven-year contract, expenditure continued during the relevant period and during this current financial year 2021-22. The Council was advised of BDO's provisional finding in relation to this matter in August 2021 and because of the potential implications for an extant contract, sought its own legal advice at that stage as to the current situation.
- 2.4 Having received advice from Trowers & Hamblins LLP, a firm of solicitors with expertise in public procurement law and local government matters, Officers' view is that the winter gritting contract continues on a lawful basis until its expiry in May 2022. Considering the situation in 2021-22 in the round, notwithstanding the initial procurement errors, it is the case that:
- Non-compliance with standing orders (in this case the contract procedure rules) does not in itself invalidate a contract
 - Under EU procurement law there is an express power to declare a contract ineffective, which has not been utilised in this case. The normal time limit for such a declaration of ineffectiveness expired in late 2015
 - The Council had the power to enter into the winter gritting contract - the issue in this case is not that the Council was acting beyond its powers to provide a winter gritting service

In terms of the appropriateness of any further remedy or sanction on this point, it is also noted that:

- The Council has already made a number of improvements to its procurement processes since 2015 (set out further below)
- Competitor bidders have the opportunity to bid for the new contract (effective from May 2022)
- Competitor bidders previously aggrieved by the 2015 process had a route to appeal the award of that contract
- There could be significant cost to the Council if it were to interrupt service provision
- The Council has acted throughout to fulfil its statutory responsibilities as a highways authority

Overall, the Council has concluded that the winter gritting contract remains valid and it has ongoing private law obligations to the contractor.

- 2.5 Secondly, in relation to consultancy services, BDO have highlighted their legal advice that payments made to a specific consultancy in July 2016 (totalling £92,857) were effectively a modification to a contract which terminated on 30 June 2016, in breach of public procurement law. The Council erred in not running a new procurement process. This breach relates to one month preceding the 2017-18 accounting period.
- 2.6 As a result of identifying that the Council did not follow public procurement law or our own Contract Procedures Rules in 2015 and 2016, BDO consider that these findings are indicative of significant weaknesses in the arrangements for partnership working and securing informed decision making. They will therefore qualify their conclusion on the use of resources for 2017-18 by stating that they are satisfied, in all significant respects, that the Council put in place proper arrangements to secure economy, efficiency and effectiveness except for the matters reported.
- 2.7 BDO have made twelve recommendations which this Committee should consider on behalf of the authority. The response to the recommendations and actions being taken by the Council are set out in the next section.

3. Improvements to procurement arrangements

General improvements in controls for CCC procurement since 2015 and 2016

- 3.1 This section outlines a number of general improvements in process over recent years, taking account of internal audit recommendations during that period:
- 3.1.1. The Council now has in place a system for completing and retaining waivers/exemptions digitally, such that these workflow from the contract manager to the service's chief officer to head of procurement to chief finance officer and finally (where required by the contract procedure rules) the monitoring officer. This aids completion, retention and monitoring of the waiver permission process.
- 3.1.2. The Council has transferred its contracts register from a standalone system to be integrated with the ERP Gold prime accounting system. This enables a harder link between spend data on the ledger, cashflow outbound from the council, and the contract register. It also requires spending officers to proactively consider the accuracy and completeness of the contract register when ordering and requisitioning spend via the system. ERP Gold also prompts regular review of contract register information, workflowing this to the same task lists that managers review for personnel and financial management.
- 3.1.3 The Council has in place a joint procurement board (with Peterborough City Council) which is chaired by the section 151 officers at PCC and CCC alternately that receives overall monitoring information for procurement at both councils. This is a useful liaison forum for the lead procurement professionals at each Council to share information and organisational intelligence with each other and the CFOs and legal representative. For the largest area of externally contracted spend (People & Communities), there is also an officer Joint Commissioning Board, which exercises a close superintendence of procurement activity (and procurement compliance) within that directorate, as evidenced by standard pro-forma cover sheets which confirm adherence to controls by report authors.

- 3.1.4 In Sept 2017, Internal Audit recommended that Procurement sign off be required for all Committee reports. This was subsequently implemented and has now been in place for several years and is well embedded. The Head of Procurement reviews all Committee reports and this is a useful device for identifying issues and procurement risks.
- 3.1.5 Recommendations from internal audit in 2017 relating to when exemptions/waivers are required were addressed in revisions to the contract procedure rules at that time. The CPR and intranet have shown a straightforward flow chart for the waiver process for some time.
- 3.2 In December 2020, the strategic procurement team was returned to the Council from the shared arrangements in LGSS, meaning that CCC had a dedicated procurement team reporting to the CCC Section 151 Officer, for the first time since 2010. During 2021 the Council has taken steps to strengthen the team. An experienced local government head of procurement was engaged on an interim basis to provide leadership during 2021. An external appointment has been made to fill this role on a substantive basis from mid-January 2022. A further external appointment has been made at team manager level completing the management team in CCC Procurement. All the management level staff in the team are qualified members of the Chartered Institute of Procurement and Supply.
- 3.3 The Council's response and remarks to the specific recommendations received from BDO are as follows:

BDO recommendation	CCC response and remarks
<p>1. Remind all officers with responsibility for procurement and contracts that all contracts must be included on the contract register</p>	<p>From April 2020, when setting up a purchase order or requisition within the ERP Gold system users are prompted for a contract register reference. The contract register is also held on the same ERP Gold system, enabling linked analysis.</p> <p>We have a process in place whereby items added to the Contract Register each month are sent to Category Managers in the procurement team for review. Category Managers use their knowledge of service procurement processes to identify items missing, requiring a waiver, or other anomalies.</p> <p>Contract register responsibilities were communicated to all staff through the Daily Blog on 23-March-2017 in response to an internal audit recommendation. There have been a range of further communications since this date.</p> <p>In anticipation of this recommendation from BDO, in October 2021 we have again reminded all listed budget managers (those with spending approver rights in our finance system) and all contract managers listed on the Contracts Register of their responsibilities for recording, by way of a direct email.</p>
<p>2. Undertake spot checks of newly awarded contracts to confirm contract details are being added to the contract register on a timely basis and that the information is accurate and complete</p>	<p>We have a process in place whereby items added to the Contract Register each month are sent to Category Managers in the Procurement team for review. Category Managers use their knowledge of service procurement processes to identify items missing, requiring a waiver, or other anomalies.</p> <p>Periodically the Support Officer based in the Procurement Team undertakes analysis on the ERP Gold held contract register to identify anomalies and raise these with contract managers.</p> <p>During October 2021, we have commissioned internal audit follow-up of this action to ensure further assurance.</p>
<p>3. Monitor findings of Internal Audit's procurement reviews to determine whether the contract register is being maintained</p>	<p>During 2020 the Council reviewed this and confirmed that internal audit actions from 2017 and 2018, relating to procurement had been addressed. Audit & Accounts Committee have established processes for monitoring implementation of significant and important internal audit recommendations at each meeting. Internal Audit have confirmed in 2021 that there are no outstanding recommendations awaiting implementation relating to procurement.</p> <p>During October 2021, we have commissioned internal audit to ensure further assurance that the contract register is being maintained.</p>

4. Provide mandatory training to all officers with responsibility for procurement on the requirements of the Public Contracting Regulations 2015 and the amendments that came into force following the end of the transition period and any subsequent public procurement legislation.	The Council provides and promotes regular training through its central procurement team. To date this has not been mandatory, however the Council will use the impetus of updating its contract procedure rules, and the findings of this report from BDO, as a basis for ensuring that all contract managers undertake this training.
5. Monitor implementation of action plans agreed in response to the findings of internal audit's procurement reviews to determine whether Find A Tender is being used for all contracts which exceed the relevant threshold (usually above £189.3k at the date of this report)	Internal Audit have confirmed in 2021 that there are no outstanding recommendations awaiting implementation relating to procurement. Audit & Accounts Committee have established processes for monitoring implementation of significant and important internal audit recommendations at each meeting.
6. Regularly publicise the online waiver form to ensure all officers are aware of its existence and understand the importance of completing the form where the Council's Contract Procedure rules cannot be adhered to	In anticipation of this recommendation from BDO, we have also reminded all listed budget managers (those with spending approver rights in our finance system) and all contract managers listed on the Contracts Register of their responsibilities for submitting waivers, by way of a direct email.
7. Undertake spot checks of newly awarded contracts to confirm waivers are being sought and approved in all required circumstances	<p>This is addressed through the monthly review of contract register changes by the Procurement team, as well as the controls outlined above to encourage and prompt contract register entries.</p> <p>To gain further assurance on this, we have asked Internal Audit to check this point in their October 2021 review.</p>
8. Monitor the implementation of action plans agreed in response to the findings of internal audit procurement reviews to determine whether any issues regarding waiver completion and authorisation are being identified	Internal Audit have confirmed in 2021 that there are no outstanding recommendations awaiting implementation relating to procurement. Audit & Accounts Committee have established processes for monitoring implementation of significant and important internal audit recommendations at each meeting.
9. Record in writing any monitoring officer approvals given for contracts exceeding four years in duration. Such approval should be held centrally by either the monitoring officer or procurement team	<p>Our intention is to revise this requirement, from its current form, in our changes to the contract procedure rules.</p> <p>Our view is the emphasis should be on identifying at commencement of procurement stage (i.e. at the point of initial Committee approval) the proposed length of contract. Committee</p>

	<p>approvals to commence require monitoring officer/legal sign off as part of the documented sign offs at the end of each report. Additionally, any waiver request with a value exceeding £100k also is routed to the Monitoring Officer for approval on our waivers system. In this way we view that it is the contract value (either via Committee or waiver) which requires monitoring officer awareness and documentation, rather than length of contract in and of itself.</p>
<p>10. Monitor the implementation of action plans agreed in response to the findings of internal audit to determine whether monitoring officer approval is being sought in all necessary circumstances</p>	<p>The original internal audit recommendation on this point is from February 2017 and the process has been significantly improved since then. There was communication to all staff emphasising the monitoring officer role in procurement in March 2017. There is monitoring officer sign-off of all committee reports, there is a clear process in the Contract Procedure Rules (outlined in the flow chart) for when monitoring officer involvement is necessary, and waiver requests automatically workflow through to the monitoring officer where required according to the CPR.</p>
<p>11. Update the contract procedure rules to ensure that the requirement to maintain formal documentation supporting the procurement process is embedded. This could usefully be supported by the establishment of a records management and retention policy.</p>	<p>This will be further reflected in the updated contract procedure rules, to be considered by the Constitution and Ethics Committee in January (delayed from November).</p> <p>The Council already has a records management and retention policy – “Keeping Information”.</p> <p>This includes 15 types of information relating to procurement with a stipulated length of retention period. This includes retaining all records relating to procurement advice (six years from the date of the advice), information relating to evaluation criteria (six months from contract award), monitoring of service levels (6 years from expiry of contract), and records relating to sealed contracts under management (12 years from last action).</p>
<p>12. Set up a central location for the storage of documentation related to the procurement process which is not already held on the Council’s procurement system</p>	<p>The updated contract procedure rules, to be considered by the Constitution and Ethics Committee in January, include a requirement to send a PDF copy of signed contracts to the central procurement team for filing.</p> <p>The Council has implemented Office 365 and a MS Teams channel is being utilised for retention of documents.</p>

4. Next steps

- 4.1 The Audit & Accounts Committee takes responsibility for the Council's functions under the Local Audit & Accountability Act 2014 on behalf of all Members. Owing to the qualification of BDO's opinion for 2017-18 and the serious findings in relation to procurement arrangements in 2015 and 2016, the Committee is invited to bring these matters to the attention of the Full Council through its annual report scheduled for the meeting on 15 December 2021.
- 4.2 Once the value for money opinion for 2017-18 is issued, the only remaining matters with BDO are objections from a local elector dated 10 August 2017 and 11 July 2018. The objections are wide ranging, but it is understood that now that work on procurement and the value for money opinion is concluded, this should enable their determination in the near future.
- 4.3 Conclusion of the 2017-18 opinion will also enable our successor auditor, Ernst & Young, to bring forward its work on the value for money opinions for 2018-19 and 2019-20, where we would anticipate the risks highlighted in 2017-18 will be further considered for the relevant years.

5. Alignment with corporate priorities

- 5.1 Communities at the heart of everything we do
- 5.2 A good quality of life for everyone
- 5.3 Helping our children learn, develop and live life to the full
- 5.4 Cambridgeshire: a well-connected, safe, clean, green environment
- 5.5 Protecting and caring for those who need us

There are no significant implications. The winter gritting contract mentioned in this report arises from the priority to ensure Cambridgeshire is a well-connected and safe county.

6. Significant Implications

6.1 Resource Implications

This report concerns the independent auditor's opinion on the Council's use of resources for the year ended 31 March 2018.

The Council achieves best value through ensuring its procurement processes are open, fair and transparent.

Under Part 5 of the Local Audit & Accountability Act 2014, the auditor may recover their reasonable costs incurred from the Council in considering these matters in excess of the audit scale fee. BDO have not yet presented a request for costs.

6.2 Procurement/Contractual/Council Contract Procedure Rules Implications

This report responds to the external auditor's finding that there were breaches of procurement law in 2015 and 2016 and sets out improvements to procurement procedures, these have now either been addressed or are currently being addressed.

6.3 Statutory, Legal and Risk Implications

The relevant statutory provisions relating to conduct of local audit are set out in the Local Audit & Accountability Act 2014

The Council received external legal advice to inform the reasoning set out at section 2.4 of this report and has had regard to the Public Contracts Regulations 2015, Local Government Act 1972, case law and other enactments.

6.4 Equality and Diversity Implications

There are no implications under this heading

6.5 Engagement and Communications Implications

There are no significant implications under this heading.

6.6 Localism and Local Member Involvement

There are no significant implications under this heading.

6.7 Public Health Implications

There are no significant implications under this heading

6.8 Environment and Climate Change Implications on Priority Areas

There are no significant implications under this heading

Have the resource implications been cleared by Finance? Yes

Name of Financial Officer: Tom Kelly

Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the Head of Procurement? Yes

Name of Officer: Henry Swan

Has the impact on statutory, legal and risk implications been cleared by the Council's Monitoring Officer? Yes

Name of Legal Officer: Fiona McMillan

Have any engagement and communication implications been cleared by Communications?

C Birchall

7. Source documents guidance

7.1 Source documents

Contract Procedure Rules

Statement of Accounts 2017-18

[Link to website](#)