

**Report to the Audit and Governance
Committee**



Report reference: AGC-019-2013/14
Date of meeting: 27 November 2013

**Epping Forest
District Council**

Portfolio: Finance and Technology

Subject: Due Diligence

Responsible Officer: Brian Bassington (01992 564446).

Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

(1) The Committee is requested to note the findings within the report and comment thereon.

Executive Summary:

The Audit and Governance Committee had requested that a report be provided on the due diligence checks undertaken by the Council on companies it entered into contracts with, and with particular emphasis on the Leisure Management Contract and the former Bailiffs contract.

This report brings together the findings of two audits of contracts carried out as a part of the Audit Plan for 2013/14 regarding due diligence and specific work relating to the Leisure Management Contract and the former Bailiffs contract.

Reasons for Proposed Decision:

Report as requested by the Audit and Governance Committee.

Other Options for Action:

No other options.

Report:

Introduction

1. Generally, due diligence refers to the care a reasonable person should take before entering into an agreement or a transaction with another party. Contract Standing Orders require that for contracts over £50,000 the following checks are carried out in order to provide due diligence:

“C10 (b). As part of the tender process, the pre-qualification information held on Constructionline (or obtained from other sources), should be in conjunction with pre-contract checks on any contractor as follows:

(i) the contractor’s background and competence to carry out the task in question;

(ii) evidence of satisfactory Employers and Public liability Insurance cover, the amount and

terms of which are to the satisfaction of the Head of Finance;

(iii) acceptable Health and Safety and Equal Opportunities policies;

(iv) details of any registration with a nationally recognised regulating body or its European equivalent as appropriate to the work and any guarantee schemes attached are satisfactory;

(v) the qualification of the workforce and supervisors in relation to the proposed works is satisfactory;

(vi) the contractor's previous work record for the Council is considered satisfactory;

(vii) obtaining satisfactory banking references, statements of account (which should be no more than 18 months old) or similar references by referees of sufficient standing.

An entry in Constructionline may count as one reference; and

(viii) asking the contractor to attend for interview if considered necessary."

2. Purchases of less than £50,000 require less stringent testing depending on their value.

3. To aid staff in following the requirements of Contract Standing Orders a detailed guide is provided on the Council's Intranet along with the documentation to be used such as Pre-Qualification Questionnaires (PQQ's), Assessment forms and Evaluation Matrixes. The guide provides a step by step trail of what to do depending on the value of the purchase, advising that each step should be documented and retained for review by Internal Audit when required.

4. The guide ensures that staff refer to the Essex Procurement Hub and Constructionline where appropriate to make use of the services they provide. Constructionline is a UK Government Certification Service for construction and related industries, provided by Capita on behalf of the Department for Business Innovation & Skills. Constructionline provides an up-to-date register of pre-qualified suppliers for construction contracts, reducing the need for further detailed assessment by the Council.

5. Where a company is not on Constructionline or part of a framework agreement through the Essex Procurement Hub and accounts are provided, these are reviewed by the Chief Internal Auditor and extracted figures are entered into a spreadsheet model which calculates financial ratios which result in what is termed an Altman's Z Score. This provides an accept or reject result, a contract maximum value and an annual maximum value.

6. As an alternative to this process, the Chief Internal Auditor may request an Equifax full company report, part of the service provided by the National Anti-Fraud Network (NAFN). These reports also provide a result based on financial ratios and recommend a value limit.

7. Recent Financial Appraisals have ranged from Private Housing Preferred Contractors and the North Weald Masterplanning Study through to the Waste Management Contract.

Current Reviews

8. As part of the Annual Internal Audit Plan 2013/14 two separate audits have been carried out on the contract process, one reviewing Contracts & Procurement Fraud and the other specifically with Housing Service contracts due to the increased levels of expenditure on contracts within the Housing Revenue Account (HRA). The review of evidence of due diligence applied to the contracts was included in the audit assignments.

Findings – Housing Contracts

9. The audit reviewed 5 separate Housing Contracts taken from the Contracts Register. The sample was selected at random.

10. The tender process was found to be accurate and complete. Documented dialogue with tenderers was evidenced and the process showed good practice throughout the selection, evaluation and award stages. Due diligence was demonstrated in ensuring that the companies selected were deemed appropriate, competent and a going concern prior to award. Monitoring of the quality of work and of the contract budgets was evidenced. This audit was given a Full Assurance rating.

Findings – Contracts & Procurement Fraud

11. A sample of contracts from across the Directorates were reviewed and no evidence of fraudulent activity was found. However there were issues identified which need to be addressed to reduce the risk to the Council which included the standardisation of tender evaluation reports and the need for tender evaluations to be held within the legal contract files to provide a full audit trail.

12. Adherence to Contract Standing Orders has been evidenced and due diligence demonstrated in the selection of contractors. This audit was given a Substantial Assurance rating.

Leisure Services Contract

13. When the contract for Leisure Services was tendered in 2004 a high level of officer time and effort was expended to ensure that the successful tenderer was suitable and met the Council's requirements as closely as possible. A review of the files held within the Environment and Street Scene Directorate has shown that the requirements of Contract Standing Orders were covered and additional work carried out including visits to existing facilities run by the tenderers, a mystery shopper exercise on a sample of those facilities and presentations by the tenderers to EFDC Members during which detailed questioning was carried out. In all, the evaluation matrix contained 70 individual valuation factors.

14. Since the contract was let, two Equifax Full Company reports have been ordered at the request of the Director of Environment and Street Scene, covering the annual accounts for 31/03/11 and 31/03/12 to monitor the financial standing of the management company, the results of which have given no concern to Officers, having reported that the company appeared to be both financially sound and improving. A further Full Company report will be requested when the accounts for the year ending 31/03/13 are published with Companies House.

Bailiffs Service Contract

15. A restricted report was presented to Cabinet on 25 October 2010 regarding the liquidation of a Bailiff Company providing services to the Council.

16. It is believed that the company had provided bailiff services to the Council since the early 1990's, with name changes in November 1998 and January 2001 with the same directors in charge. Throughout this period the Council had also used a number of other external bailiff companies. No records have been found covering the appointment of this company under its various names, so it has not been possible to identify the level of due diligence applied to their appointment.

17. The bailiff companies at that time had signed up to a Service Level Agreement (including a Code of Conduct which also applied to the internally employed bailiff) providing a

level of control and a base with which to monitor the services provided. Unfortunately, while regular payments were being received nothing appeared to be wrong until it was identified that payments made by customers to the bailiffs had not been passed over to the Council. All of the outstanding money was recovered along with Council costs and interest. Controls are now in place to minimise the risk and to ensure that payments made to the bailiffs are received promptly by the Council.

18. Following the failure of this company a full tender process was carried out during which, as part of the detailed PQQ evaluation, the Chief Internal Auditor reviewed the last three years accounts prior to the PQQ, for twelve bailiff companies. Eleven companies passed the financial appraisal of which, following further evaluation with assistance from the Essex Procurement Hub, three companies were contracted to provide the service to the Council.

Conclusion

19. It is considered that the Council has in place a robust set of Contract Standing Orders which include steps to ensure due diligence in the selection of contractors and that these are generally adhered to by staff. Controls are in place to identify errors or omissions which provide reasonable assurance regarding the efficient and effective processing of contracts and training and the guide provided to staff ensure that staff are aware of their responsibilities when spending public money.

Resource Implications:

Within the report.

Legal and Governance Implications:

Within the report.

Safer, Cleaner and Greener Implications:

No specific implications.

Consultation Undertaken:

Corporate Governance Group.

Background Papers:

Audit files and working papers.

Impact Assessments:

Risk Management

Internal Audit has a primary objective to provide an independent and objective opinion on the adequacy of the Council's control environment, including its governance and risk management arrangements. This report will assist Members and management to determine the adequacy and effectiveness of the arrangements in place for due diligence.

Equality and Diversity

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications?

No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
There are no specific equalities impacts.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
There are no specific equalities impacts.