



Internal Audit Final Report

Social Services Transport Contracts 2006/7

Directorate: Corporate Services and Personal Services
Date: 7 October 2014

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1. Introduction

- 1.1. An audit review of the administration of the tendering procedures relating to the Social Services Transport Contracts 2006/07 was undertaken following concerns raised by one of the prospective contractors. The budget for the contract is approximately £450,000 with 85 individual routes up for tender.
- 1.2. The issues raised were investigated by means of:
 - discussion with staff at the Procurement Unit and the Physical Resources Section of the Personal Services Directorate to clarify the procedures employed
 - examination of documentation including the original tender submission and the tender evaluation schedule
 - examination of the re-tender submission and tender evaluation schedule
- 1.3. The functions relating to the management of the tendering process by the Procurement Unit and the Personal Services Directorate were documented. The audit findings listed in section 4 are based on discussions with staff and the review of documentation relating to the award of the 2006/07 transport contracts, BCBC Contract Procedure Rules and the EU Public Procurement Regulations.

2. Objectives of the Audit

- 2.1. The main objectives of the audit were to:
 - investigate the issues raised by one of the prospective contractors
 - establish whether the tender process followed provides assurance of adherence to the EU Public Procurement Regulations and the BCBC Contract Procedure Rules
 - identify potential shortcomings in current BCBC Contract Procedure Rules
 - assess whether responsibilities were appropriately assigned in the tender process

3. Audit Opinion

- 3.1. The findings of the investigation relating to the concerns raised by the prospective contractor revealed that correct procedures had been followed and the contractor had been treated fairly. The specific issues raised by the contractor have been addressed in Appendix 1 to the report.
- 3.2. A number of procedural weaknesses were identified as a result of the investigation. These weaknesses did not however, affect the view expressed in 3.1.
- 3.3. The most significant issues noted during the investigation are identified as follows:-
 - The lack of clarity regarding the responsibilities of the Procurement Unit and the Personal Services Physical Resources Section. The Procurement Unit needs to take a more pro-active role in overseeing the tendering process ensuring compliance with EU regulations and BCBC Contract Procedure Rules.
 - There is a lack of management involvement within the decision making process with delegated powers not being used in the process.
 - Contracts which are not awarded on lowest price are not referred to the Director of Corporate Services for endorsement as per the requirements of the Contract Procedure Rules.
 - There are a number of areas requiring clarity in the current BCBC Contract Procedure Rules with particular reference to the re-tendering process and documentation of the reasons for decisions.
- 3.4 In conclusion, despite the audit work finding no reason to indicate that one of the contractors had been treated unfairly, the significance of the lack of complete adherence to EU and local procedures has resulted in an overall audit opinion that the tender process for the social services contract 2006/7 was **inadequately controlled**.

4. FINDINGS, RECOMMENDATIONS AND MANAGEMENT ACTION PLAN

Risk may be viewed as the chance, or probability, of one or more of the organisation's objectives not being met. It refers both to unwanted outcomes which might arise, and to the potential failure to realise desired results.

*The **recommendations** column is categorised on the following basis:*

- Fundamental - action that is considered imperative to ensure that the organisation is not exposed to high risks;*
- Significant - action that is considered necessary to avoid exposure to significant risks;*
- Merits attention - action that is considered desirable and should result in enhanced control or better value for money.*

	Findings and risk	Categorisation	Recommendation	Management Comment	Responsible Officer/ Implementation Date
	Issues relating to void tender				
1	<p>The tendering procedures employed for the 2006/7 Personal Services Transport Contracts were examined. The tender evaluation documentation and the original tender submission by the complainant were scrutinised.</p> <p>It was confirmed that the tender submission did not comply with requirements and that correct procedures had been followed by staff at the Procurement Unit. It was also confirmed that the re-tendered contracts were awarded based solely on price on this occasion. There was no indication of unfair treatment towards any of the contractors. Responses to the specific points raised by the contractor can be found in Appendix 1.</p>	N/a	N/a	N/a	N/a

	Findings and risk	Categorisation	Recommendation	Management Comment	Responsible Officer/ Implementation Date
2	It was claimed by one of the contractors that it had been verbally indicated to them by officers of the Procurement Unit that they would be successful with 4 routes if they re-tendered for them. This was not substantiated by the procurement unit. However, no record had been maintained of the telephone conversation.	S	All post tender discussions should be documented as per the Contract Procedure Rules.	Agree with recommendation. All correspondence between the Council and potential contractors should be evidenced in writing where practical.	Head of Procurement for Tender invitation and acceptance. Transport Co-ordinating Manager for post award Immediate
Issues Arising From the Tendering Process					
3	Pre-determined prices had not been set for each of the routes as a guideline for accepted costs per the Conditions of Tender. Some day-centre managers do not document reasons for choosing one contractor over another. The combination of these two findings combined result in a tender procedure that is not transparent and where decisions can be brought into question by outside parties.	S	Guidelines for prices should be determined prior to the close of tender for evaluation purposes. Reasons for choosing quotes should be documented to provide a suitable audit trail.	Guidance rates for existing routes are already in existence, as a benchmark. Pre-determined rates linking with budget estimates need to be prepared in advance of tenders being issued for new routes. This will link with the Transport Contract Procurement Strategy. Agree. This information should be held centrally – either within Transport Unit or Corporate Procurement Unit	Transport Co-ordinating Manager April 2007 (when next tender round begins)
4	Pre-addressed envelopes are enclosed with the tender documents along with detailed instructions regarding tender submission. These instructions include a letter which provides detailed instructions to be followed in the event of the pre-addressed envelope not being used. The conditions of tender however, do not reflect this level of detail for this area.	MA	Management should consider enhancing the conditions of tender which are supplied along with the tender documents to reflect the guidance provided in the accompanying letter.	Disagree. The Conditions of Tender only become effective and binding once the contract is in place and therefore would not be relevant in this context. The Invitation letter was combined in this instance with the instructions to tenderers and it may be necessary in future to separate the procedure for return and validation of tender documents in a separate section.	N/A Head of Procurement April 2007

	Findings and risk	Categorisation	Recommendation	Management Comment	Responsible Officer/ Implementation Date
5	<p>The routes where acceptable quotes were not received first time were not re-advertised. Any contractor who had submitted quotes originally were invited to re-submit due to time limitations.</p> <p>The guidelines for re-tendering and post tendering negotiations are not formalised.</p>	S	<p>The Contract Procedure Rules do not include detailed guidance for what to do when original submissions are found to be unsatisfactory. In order to maintain the fairness and openness of the process these should be documented for internal guidance and included in tender guidance so applicants are also aware of the process.</p>	<p>Agree. CPR's are being reviewed and amended and simplified guidance notes will be prepared. This aspect can be covered as part of the review</p>	<p>Head of Procurement</p> <p>April 2007 (after review of CPR's is finalised)</p>
6	<p>Procurement notify the Directorate of the results of the tender. Service management should then provide an explanation if any lowest cost tender was not the preferred contractor. The administrative assistant then notifies procurement of the successful contractors. At no point was delegated powers noted to be used in the process.</p>	S	<p>Delegated powers must be used in the tender process to endorse decisions taken by management and ensure that the correct executive arrangements have been followed.</p> <p>Details of the level of authorisation and delegated power used should be provided to the procurement unit prior to the contractors being notified of the award of contracts.</p>	<p>The service related procurement strategy and project plan will include this as part of the planning and review process</p>	<p>Head of Procurement</p> <p>February 2007</p>
7	<p>In the event of one of the successful contractors withdrawing, the remaining contractors who submitted tenders for this round are reviewed and personal services requested to select. If none are suitable, re-tendering takes place. However, it was noted that there are no guidelines for this type of scenario.</p>	MA	<p>Enhancements to the Contract Procedure Rules are required to provide guidance on re-tendering.</p>	<p>See comments in 5 above</p>	<p>Head of Procurement</p> <p>April 2007</p>

	Findings and risk	Categorisation	Recommendation	Management Comment	Responsible Officer/ Implementation Date
8	<p>Prices for routes received from void submissions were entered on the original tender evaluation schedule. As reasons for choosing/not choosing contractors are not always documented, their inclusion could be interpreted as an influencing factor in the assessment of tender submissions.</p> <p>There are no guidelines in the Contract Procedure Rules on dealing with void submissions</p>	S	<p>Only prices received from valid submissions should be included on tender evaluation schedules so not as to influence decision makers.</p> <p>Void entries should not be seen by tender evaluators at all in order to ensure a well controlled tender process has been adhered to.</p> <p>The Contract Procedure Rules should include guidance on void submissions.</p>	<p>Agree.</p> <p>Although the motives were to ensure that the rates accepted were the best available in the market at a point in time, Tendered rates should be assessed against pre-determined rates.</p> <p>Comments as 5 above</p>	<p>Head of Procurement</p> <p>April 2007 (when next tender round begins)</p> <p>Head of Procurement</p> <p>April 2007</p>
	Breaches of Regulations/Procedures				

	Findings and risk	Categorisation	Recommendation	Management Comment	Responsible Officer/ Implementation Date
9	<p>The budget for the social services transport contract is approx £450K with 85 individual routes for tender. Audit testing revealed, however, that while the contract had initially been correctly identified as falling under the EU rules and advertised in the EU journal, subsequently procedures under the EU Public Procurement rules had not been followed correctly.</p> <p>When a contract is identified as falling under EU guidance it must be decided in advance under what basis the contract will be awarded – lowest price or the most economically advantageous from the point of view of the awarding authority. The decision was taken for this contract that it would be awarded on the later basis. However, the tender documentation did not specify what weighting would be given to the following criteria – price, delivery of service and quality of service. This, in conjunction with the findings in recommendation 3, make it difficult to demonstrate whether correct procedures were followed under EU legislation.</p>	F	Procurement should provide guidance on adherence with EU regulations where tenders fall outside the EU threshold. Procedures and guidelines should be written for relevant persons in each directorate to understand additional and over-ruling obligations under EU legislation.	<p>Disagree in part</p> <p>This tender was undertaken prior to the New Consolidated Directive becoming effective at the end of January 2006 and the terms of this were therefore not applicable.</p> <p>The evaluation criteria were pre-determined and included in the OJEU advert and conditions of tender, although no weightings were applied.</p> <p>For tenders issued post February 2006, the selection criteria and weighting must be determined in advance and included both within the procurement strategy/project plan and the tender advertisement/documents.</p> <p>Tender evaluation panel to set final scores based on the analysis of compliant bids and the outcomes are to be evidenced in writing and held centrally.</p> <p>Consideration should be given to mandating that all EU tenders be undertaken by the Corporate Procurement Unit.</p>	<p>Head of Procurement</p> <p>December 2006</p>

	Findings and risk	Categorisation	Recommendation	Management Comment	Responsible Officer/ Implementation Date
10	If there are special reasons for not accepting the lowest tender, then approval is not sought from the Deputy Chief Executive and Executive Director, which therefore leads to a breach in the delegated powers process.	S	<p>The tender process must be clear in the option being taken for the acceptance of quotes on contracts exceeding EU guidelines, whether on lowest price, or most economically advantageous from the point of view of the authority.</p> <p>Not only must the contractors be made aware of the decision making process, the process of choosing the contractors must be suitably documented as evidence the procedures have been followed.</p>	<p>This was clearly stated in the Conditions of Tender (clause 8f)</p> <p>A minimal number of contracts were awarded based on the needs of individual service users. Further advice will be sought in future tendering processes should such situations arise.</p>	<p>N/A</p> <p>Head of Procurement</p> <p>April 2007 (when next tender round begins)</p>

Appendix 1 – Follow up of specific points raised by one contractor

<u>Comment made by contractor</u>	<u>Findings</u>	<u>Recommendation/Follow up</u>
<p>We fail to understand why it took in excess of four weeks before we were informed that our original tender was void and then only by telephone.</p>	<p>85 individual routes were put out to tender. A tender evaluation schedule was then put together and reviewed by the day centre managers. Successful parties are then notified. Further delay can be due to successful contractors then rejecting routes they have been offered leading to contacting the next contractor on the list or re-tendering. The contractor concerned did not necessarily have to be contacted to indicate their tender was void. They were simply asked to re-tender for routes where original satisfactory tenderers were not successful.</p>	<p>N/a</p>
<p>Why, when we were advised to re-submit four of the original tenders, and told that we would be favourable considered for these, were we only offered two contracts ultimately.</p>	<p>Discussions with procurement staff did not support this comment; however no record was maintained of the telephone conversation.</p>	<p>See recommendation 2</p>
<p>We fail to comprehend how your staff could later consider our original tenders when we had been informed on the 8th March that our application was void.</p>	<p>It has been confirmed that the original tender submission did not comply with requirements and hence correct procedures were followed when contracts were not awarded to this contractor in the initial tender evaluation process.</p> <p>The contractor was only successful when routes were put out for re-tender and new submissions were made.</p>	<p>The audit findings have indicated that procedures for post-tender negotiations and dealing with void tenders does need to be improved, but we can conclude that the treatment of the contractor in this instance was not unfair/unfavourable.</p>
<p>We consider it to be incompetent on the part of BCBC that we did not receive the Application and Conditions of Tender complete with the vital tender marked envelope.</p>	<p>It has always been normal practice to enclose the Application and Conditions of Tender in the tender pack sent to potential contractors. No reason has been identified as to why it was no enclosed in this instance.</p> <p>In the absence of a tender envelope, the requirement to use a pre-printed envelope is stated twice in the</p>	<p>No recommendation raised.</p>

	letter accompanying the tender documents.	
<p>We would draw your attention to the Conditions of Tender, paragraph 8 Point C, which states that Tenderers will be contacted and the number of vehicles ascertained at the time of the tender. However, we were not contacted and it begs the question whether or not other potential operators were also asked for this information.</p>	<p>Paragraph 8.C states 'prior to the award of any contract, tenderers will be contacted to confirm the number of vehicles they operated at the time of the tender.'</p> <p>This information was returned by the contractor in question on the 22 December 2005. All other contractors were contacted at the same time to provide the information in advance of the tender, hence they were treated in the same manner as the other operators.</p>	<p>No recommendation raised.</p>

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