



FINAL

Internal audit report 2014/15

Long Term Contract

SWANAGE TOWN COUNCIL

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Introduction

This report contains a note of the findings and recommendations made to Swanage Town Council following an audit review of the arrangements to procure and manage the contract for the stabilisation works carried out at Shore Road from December 2013 to 9th December 2014.

The initial price for the construction element of the works was £2.1m. The end contract value was £2.92m. An audit was requested to clarify the reasons for the difference between the original estimated and final contract values and specifically to review the following risks:

1. Weak procurement processes meant that the most economically advantageous contract was not secured; and
2. Poor contract management led to contract overruns and increased costs.

The audit work was carried out between 23 February 2015 and 30 June 2015.

Audit Opinion

I am able to offer **reasonable** assurance that the Council's procurement and contract management processes are operating as they should. The range of assurance is full/reasonable/partial/none.

The Council appointed suitably qualified advisors to assist them with identifying what works were required and to manage the works contract. Two separate geological studies of the area subject to subsidence were carried out as part of this process of identification.

There were a number of unforeseeable events and some planned changes which caused the contract to overrun both on time and cost, but the officers and members worked together to respond quickly to requests for direction from the contractor.

There were improvements which could have been made to the procurement processes and the contract administration in order to ensure that the Council minimised the cost of the works. It is noted that many of the areas for improvement arose from a strong desire to get the work completed both outside of the summer season and during 2013/14 in order to reduce the risk of further landslips on the main seafront following landslips at the north of the bay over the winter of 2012/13. The areas for improvement are particularly relevant as the new Council considers its corporate priorities which may include phase 2 stabilisation works. The recommendations are noted in the action plan at the end of this report.

Detailed findings

Risk 1: Weak procurement processes meant that the most economically advantageous contract was not secured

1.1 An expert advisor is engaged (in house or third party) to assist with drawing up the detailed specification and to analyse and provide guidance on the tenders received from third parties

The Council appointed Morgan Carey Architects (MCA) to assist them with drawing up the detailed specification and to manage the contract. Through MCA, the Council appointed Christopher Veysey (Chartered Quantity Surveyor) to analyse the tenders received from third parties. Both suppliers have appropriate technical qualifications and experience to advise the Council on the contents and evaluation of the tenders for the works contract.

1.2 Appropriate work was undertaken prior to the tender being drawn up to understand the nature and scale of the stabilisation works required

Prior to the tender being drawn up, the Council appointed a firm of Geological engineers to carry out a ground investigation report. The investigation included a review of the strength and stiffness of the sub-surface, material classification and a review of aggressive ground conditions. The engineers dug 9 exploratory holes in 2011, but also included data about 16 holes dug in 2003 when the land was last surveyed. They noted 11 options open to the Council, from do nothing (the cheapest option at the outset but carrying with it a future risk of harm or damage) to soil nailing (the option which the Council opted for, which improves the long-term stability of slopes).

A review of the report indicates that appropriate work was undertaken to understand the nature and scale of the stabilisation works required.

1.3 The scheme costings include appropriate contingency provisions for reasonably foreseeable events

The invitation to tender (ITT) was prepared using measured quantities where possible in order to drive out uncertainty from the inclusion of provisional sums. The bill of quantities (costings) for the successful contractor ran to over 2,500 lines and detailed costings were provided for the majority of those.

The tender set out a number of standard terms designed to reduce the risk of cost overruns, including: the contract being for a fixed price; and the stipulation that the contractor was responsible for managing and paying for the identification and management of service connections, road closures and waste disposal.

A provision of £85,000 was included within the ITT (to be expended on the instructions of the

Contract Administrator if required). There were no other provisions included within the ITT as the requirement to price every part of the contract using measured quantities, and the transfer of risk to the contractor for foreseeable unknown costs, meant that general provisions for reasonably foreseeable events were not required.

1.4 Procurement processes are run in accordance with the Council's contract regulations and EU procurement regulations (where appropriate)

The two most significant elements of cost for the stabilisation contract were those relating to the contract administration, and to the works themselves.

The contract administrator, Morgan Carey Architects (MCA), was appointed at the planning & design stage of the project. At the time of the original appointment, it was not known whether or not the Council would proceed with the project (a previous attempt ten years ago did not get past the design stage). However, the Members of the Council were content with the designs proposed by MCA, and they were appointed to carry out the planning and design work for an estimated cost of £20,900. The Council's Financial Regulations require 3 estimates for works between £500 and £25,000, but does allow an exception at 11.a.ii for 'for specialist services such as are provided by solicitors, accountants, surveyors and planning consultants'. Morgan Carey's initial contract was extended on three occasions to a total contract value of £33,750. Each extension was made following a report by the Clerk and a Council resolution.

After the scheme had obtained planning permission and it was clear that the Council wished to carry out the project, Management sought three quotations for the contract administration part of the work, in accordance with the Council's Financial Regulations and with legal advice from NALC. The value of this was estimated to be £44,000, based on a contract value of £1.74m. Although three quotations were sought, there is a risk that the original supplier had an advantage given that they had been carried out the planning and design stages. There is also a risk that the disaggregation of work may have resulted in the Council losing the opportunity to negotiate a better rate with the supplier.

The works contractor, Raymond Brown Construction, was appointed following a tender process. An advertisement was placed in the Bournemouth Echo and Pre-Qualification Questionnaires (PQQ) issued to five suppliers, all of whom were subsequently issued Invitations to Tender (ITT). Three suppliers submitted a tender by the deadline. The value of works (both estimated and actual) is below the threshold required for an EU procurement process. The tender process was carried out in accordance with the Council's Financial Regulations.

1.4a I recommend that, for future contracts for architectural services with a design and contract administration element, the Council consider the full extent of work which is likely to be placed with any one supplier and that it follows an appropriate procurement method accordingly.

1.4b I also recommend that for future large capital contracts, sufficient time is allowed for a full procurement process in order to ensure that the Council obtains best value for money.

1.4c I recommend that the Council seek to develop a set of principles for the management of large capital contracts and that consideration be given to developing the principles in partnership with other larger Town Councils, and/or by utilising existing principles held at the District or County level.

1.4d I recommend that the regulations be updated to include the process to be followed where no approved list exists such as, for instance, requiring that any opportunity be marketed as widely as possible in order to generate the most interest and obtain the best price.

1.4e I recommend that a scoring matrix is established prior to tenders being issued against which submissions can be scored in order to ensure that the Council objectively identifies the provider who will give best value for money.

1.5 Invitations to tender were appropriately advertised in order to generate the highest number of submissions

The Council only advertised the tender for the stabilisation works in the Bournemouth Echo. This followed advice from MCA and the Quantity Surveyor that they had already contacted all of the largest construction companies to ascertain who was interested in tendering. This may have limited the number of tenderers who were aware of the opportunity and it may have resulted in the Council not obtaining the best possible price for the contract. In addition such local advertisements are against the Office of Government Commerce (OGC) guidance which advises public bodies to 'advertise and market contracting opportunities as broadly as possible'.

1.5a I recommend that the Council consider advertising in an appropriate trade magazine or the Official Journal of the European Union (OJEU) for future large capital contracts in order to ensure that all possible suppliers are aware of the tender opportunity.

1.6 Reasonable timescales were allowed in order to generate the highest number of submissions

The advertisement for the works contract was placed on 16 September 2013. PQQ responses were required back within 9 days of the advertisement, which is a reasonable timescale. Five responses were received.

ITTs were issued on 4 October 2013 with an initial deadline for response of 21 days (against a more common timescale of 4 to 8 weeks). The tender deadline was subsequently extended to 14 November 2013 (41 days) following supplier requests for more time. Three tenders were received.

The initial timescale for the return of the ITT was very short given the requirement to price around 2,500 different elements of the contract. One supplier withdrew from the process citing a lack of time to pull together sub-contractor costs. There is a risk that, where

timescales are too tight, tenderers will either withdraw or will be unable to properly price the contract.

1.6a I recommend that the deadlines for future large value procurements are set to allow suppliers enough time to research and prepare a tender in order to ensure that the extent of the work is fully identified, and that the price is realistic.

1.7 The evaluation of tenders was robust and both the evaluation of tenders and notification to the successful party were carried out in a timely manner

The Quantity Surveyor's protocol for tender evaluation is to take the cheapest tender received and review it in detail to ensure that it can deliver. They do not rigorously evaluate all tenders received.

This process does not comply with best practice evaluation which advocates the analysis of each tender against a pre-set scoring matrix which has been shared with suppliers. It may be more common in the works industry, and evaluating one tender in detail is cheaper than evaluating all. However, such a process could leave the Council open to the risk of a supplier challenging the Council's decision on the basis that it had not subjected each tender to the same evaluation process.

The evaluation of the works tender was completed and the report to Council prepared within 4 days of the tender deadline. This is a reasonable timescale given only the cheapest tender was fully evaluated.

The contract for the works was not signed until 5 February 2014, 77 days after Council's resolution to appoint Raymond Brown Construction Limited, and 65 days after the work was due to start on site according to the tender documents. Although time was of the essence for this project, and it is not uncommon for works contracts to be signed sometime after the commencement of the start on site, there remains a risk to the Council where a contractor starts work on a project before the terms and conditions have been fully agreed in writing.

1.7a I recommend that the Council carry out a full evaluation of all tenders for future capital projects in order to ensure there is no risk of challenge from suppliers who feel that they were not treated equally.

1.7b I recommend that the Council ensures that signed contracts in place before contractors start work on a project in order to ensure that terms and conditions have been fully agreed.

1.8 All relevant planning permissions and any other arrangements were in place before the tender was advertised, in order to ensure there were no undue delays between the appointment of the contractor and start on-site

The Council had obtained planning permission and carried out asbestos surveys for relevant buildings prior to the tender being advertised.

The Council required that the works contractor be responsible for identifying and managing issues with service connections. In the event the construction work uncovered a gas main which was not on any service map, but this was not cited by the contractor as a reason for delay.

There was an assumption that the drainage from the scheme would be able to run into Dorset County Council Highways' drainage systems, but permission was ultimately refused. The Council subsequently came to an agreement with the Environment Agency to put the run-off into a culvert. This was resolved early enough in the project that it did not hold up the work, but it should be considered a risk for any future projects of this nature.

1.8a I recommend that early agreement is made with DCC Highways or the Environment Agency as regards the run-off from stabilisation schemes in the event of additional stabilisation works being carried out.

Risk 2: Poor contract management led to contract overruns and increased costs

2.1 An expert advisor is engaged (in-house or third party) to advise on contract stages and reasonableness of extension requests

As noted in section 1.1, the Council appointed Morgan Carey Architects to act as its expert advisor for both the design and contract management aspects of the project.

2.2 A dedicated contract administrator was in place to oversee the delivery of the contract and related budget monitoring who was in a position to identify and escalate issues for resolution in a timely way

Responsibility for monitoring the contract was split. The Town Clerk was responsible for dealing with the administrative and legal aspects, and the Council's Operations Manager dealt with the practical aspects of monitoring the contract. In addition, MCA appointed a dedicated contract administrator.

No additional management resources were put in place to backfill the time spent by the Clerk and Operations Manager dealing with the project. Although the Council's operational business was largely unaffected, some of the Council's other projects were not progressed as a result.

The Council did not set out a scheme of delegation at the start of the project. Such a document is useful to identify the roles and responsibilities for officers and the working party, and to identify who has decision-making powers in respect of different financial or other material project decisions which can help to speed-up the decision-making process.

In addition to its internal reporting, the Council reported progress with the scheme (including notes of significant changes to the project and related overspends) via its residents' newsletter.

2.2a I recommend that schemes of delegation are set out for larger projects to identify the roles and responsibilities for officers, Members and any third parties involved in a project. The document should also set out who has decision-making powers and what the thresholds are which trigger a different decision-making process.

2.2b I recommend that the Council consider whether additional staffing resources are needed when running a larger project, in order to ensure that other Council objectives are still progressed in a timely way.

2.3 Regular on-site meetings were held with key officers, third parties and the contractor to ensure that any issues were identified and dealt with in a timely way

Meetings were held at least monthly during the project, which is sufficiently frequent to enable good contract management.

A review of the minutes of the meetings demonstrates that key staff from the Council and the contractors were present, and that the agendas covered a range of reporting matters with sections for the contractor, third party advisors and the Council such that all issues could be identified, discussed and decisions minuted.

The minutes document the identification of issues which affected the timely completion of the project: the discovery of unrecorded, live services (a gas connection); the extreme wet weather during the winter of 2013/14; the additional work relating to the re-profiling of the Shore Road bank and the re-siting of the War Memorial; and the discovery of SIP Grenades.

The most significant issues which required amendments to the project scope (the re-profiling of the Shore Road bank and the re-siting of the War Memorial) were identified in the third site meeting on 11 March 2014. Budget cost details were submitted to the Council on 14 March 2014 and a decision to proceed was taken at an Extraordinary Council meeting on 19 March 2014. The contractor was instructed to proceed on 20 March 2014. This is a very quick turnaround for decision-making for any organisation, but particularly so for local government, where the requirement to publish agendas a statutorily specified number of days before meetings take place automatically adds five working days to the time taken to make any significant decisions.

The minutes also document the Council's raising of the requirement to complete the project in a timely way. Concerns were raised at the first meeting (when the contractor reported a delay of one week due to the discovery of gas pipework) and then again from meeting 6 (June 2014) and each meeting thereafter until the project's end. Although the project ultimately overran, the minutes show that the Council did maintain the pressure on the contractor to complete the project as soon as possible.

2.4 Appropriate project documents are in place (including a PID, a Scheme of Delegation, a budget, a risk register). These are reviewed frequently to identify and deal with any issues in a timely way

The project had a detailed project plan and cost reports (produced by the contractor and the quantity surveyor respectively), but no project initiation document (PID), risk register or scheme of delegation.

Projects can be successfully run without such documents, but the discipline of creating and maintaining a PID and risk register can help to ensure the required outcomes, reasonably foreseeable risks to achieving them and actions required to manage those risks are identified at an early stage. This can help also help with the identification of all reasonably foreseeable project costs and contribute to better budgetary control.

Comment has been made above in paragraph 2.2a about the implications of not having a scheme of delegation in place.

The evidence shows that much of the overspend on this project related to events outside of the Council's control. However, it is likely that the Council would have at least have been on notice of the possibility of increased costs in the event of bad weather and additional stabilisation works had a detailed risk register been prepared. It is possible that the Council would have been able to mitigate some of the increased working costs of the contractor had they also been able to consider their course of action in the event of various risks materialising.

2.4a I recommend that the Council ensures that a project initiation document and risk register are drawn up for any significant projects in future in order to help identify the project outcomes and risks of achieving them, and to help identify what actions would be taken to mitigate those risks.

2.5 The contract between the Council and its contractor contained appropriate clauses to enable the Council to act on poor performance e.g. penalty clauses and best endeavours.

The Council's contract with the contractor contained appropriate clauses to enable the Council to act on delays and poor performance. The clauses included a best endeavours clause (with regards to timely completion) and penalty clauses allowing the Council to claim liquidated damages.

The contract also contains a note of 'relevant events', the occurrence of which would allow the contractor to make a reasonable request for an extension of time. The events include 'exceptionally adverse weather conditions' and 'force majeure'.

2.6 Regular reporting was in place to the Clerk and Members in order to ensure any appropriate decisions could be made in a timely way

The Council's contract administrator reported back frequently to the Clerk, and raised any issues immediately. The Clerk allocated responsibility for decision-making based on an informal rule that any decision which would increase the contract price had to be agreed by the Council as a body, with minor variations within the contract price being dealt with by officers, with input from the working party where appropriate. Extraordinary General Meetings were convened for key matters. These require a notice period of three clear days, so Members were able to convene and take decisions quite quickly.

2.7 Appropriate action is taken at the earliest time to address issues

The review of the minutes of the site and Council meetings demonstrates that issues affecting the timely completion of the project were raised at the earliest opportunity, and that prompt decisions were made to deal with them. A decision was made about how to deal with the most significant contract amendment (relating to the re-siting of the war memorial) within five days of the matter being identified at a site meeting.

2.8 The Council enforces penalty clauses where appropriate to manage contract delivery

In January 2015 the Council resolved that it was not minded to levy penalties against the contractor for sub-performance. A final decision will be taken later in 2015, possibly following the defects liability inspections in the autumn.

Although there were considerable delays and cost over-runs in relation to the contract, many of the delays and cost increases were either as a result of matters outside of the contractor's control (such as the unexpectedly wet winter of 2013, or the discovery of unexploded phosphorus grenades within the stabilisation area), or were agreed variations to the contract (such as the additional work relating to the re-siting of the war memorial).

In addition, the contractor produced evidence of additional contract costs which they had absorbed during the contract. These amounts would have been invoiced to the Council in the event of a penalty being levied against the contractor.

Consequently, it appears as though a decision not to enforce the penalty clauses on this occasion would be reasonable.

Audit Recommendations

Recommendations made during the audit are shown in appendix one to this report.

Recommendations are graded as follows:

Rating	Significance
High	Either a critical business risk is or may not be being adequately addressed or there is substantial non-conformity with regulations and accepted standards.
Medium	Either a key business risk is not being adequately addressed or there is a degree of non-conformity with regulations and accepted standards.
Low	Either minor non-conformity with procedure or opportunity to improve working practices further.

The number of recommendations made at this audit visit and their priority are summarised in the following table:

Rating	Number
High	4
Medium	7
Low	2
TOTAL	13

I would like to thank Martin Ayres, Town Clerk and Geoff Brookes, Operations Manager for their assistance during this audit.

Darkin Miller ~ Chartered Accountants
2014/15 INTERNAL AUDIT OF SWANAGE TOWN COUNCIL
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Appendix 1 – Recommendations and Action Plan

Recommendation number	Detail	Priority (Low/Medium/High)	Management Response	Responsible Officer	Due Date
1.4a	I recommend that, for future contracts for architectural services with a design and contract administration element, the Council consider the full extent of work which is likely to be placed with any one supplier and that it follows an appropriate procurement method accordingly.	H	Agreed	TH1/OPS1	At time of next procurement exercise.
1.4b	I also recommended that for future large capital contracts, sufficient time is allowed for a full procurement process in order to ensure that the Council obtains best value for money.	H	Agreed	TH1/OPS1	At time of next procurement exercise.
1.4c	I recommend that the Council seek to develop a set of principles for the management of large capital contracts and that consideration be given to developing the principles in partnership with other larger Town Councils, and/or by utilising existing principles held at the District or County level.	M	Agreed. To be discussed with colleagues from other larger Town Councils.	TH1/TH3	30 th September 2016
1.4d	I recommend that the regulations be updated to include the process to be followed where no approved list exists	L	Agreed. Financial Regulations will be amended to reflect the Public Contract Regulations 2015, which	TH1/TH3	To be implemented with

	such as, for instance, requiring that any opportunity be marketed as widely as possible in order to generate the most interest and obtain the best price.		stipulate that all tenders with an estimated value in excess of £25,000 must be advertised on the Contracts Finder website.		immediate effect. Financial Regulations to be amended when new model issued by NALC/SLCC.
1.4e	I recommend that a scoring matrix is established prior to tenders being issued and that submissions are scored against that in order to ensure that the Council objectively identifies the provider who will give best value for money.	M	Agreed that the Council will use appropriate methods to ensure that it objectively identifies the provider who will give best value for money, including a scoring matrix where suitable.	TH1/OPS1/TH3	At time of next procurement exercise.
1.5a	I recommend that the Council consider advertising in an appropriate trade magazine for future large capital contracts in order to ensure that all possible suppliers are aware of the tender opportunity.	M	As stated in the response to recommendation 1.4d above, the Council will advertise all tenders with an estimated value in excess of £25,000 on the Contracts Finder website. This will be supplemented by an advert in a trade magazine where appropriate.	TH1/OPS1	At time of next procurement exercise.
1.6a	I recommend that the deadlines for future large value procurements are set to allow suppliers enough time to research and prepare a tender in order to ensure that the extent of the work is	M	Agreed	TH1/OPS1	At time of next procurement exercise.

	fully identified, and that the price is realistic.				
1.7a	I recommend that the Council carry out a full evaluation of all tenders for future capital projects in order to ensure there is no risk of challenge from suppliers who feel that they were not treated equally.	M	Agreed, unless there is clear professional advice that this is unnecessary.	TH1	At time of next procurement exercise.
1.7b	I recommend that the Council ensures that signed contracts are in place before contractors start work on a project in order to ensure that terms and conditions have been fully agreed.	H	Agreed that best endeavours will be used to ensure that a signed contract is in place before contractors start work on a project.	TH1	At time of next procurement exercise.
1.8a	I recommend that early agreement is made with DCC Highways or the Environment Agency as regards the run-off from stabilisation schemes in the event of additional stabilisation works being carried out.	M	Agreed	TH1/OPS1	At time of any future stabilisation works.
2.2a	I recommend that scheme of delegation are set out for larger projects to identify the roles and responsibilities for officers, Members and any third parties involved in a project. The document should also set out who has decision-making powers and what the thresholds are which trigger a different decision-making process.	M	Agreed	TH1	At time of next large scale capital project.
2.2b	I recommend that the Council consider whether additional staffing resources	L	Agreed	TH1	At time of next large

	are needed when running a larger project, in order to ensure that other Council objectives are still progressed in a timely way.				scale capital project.
2.4a	I recommend that the Council ensures that a project initiation document and risk register are drawn up for any significant projects in future in order to help identify the project outcomes and risks of achieving them, and to help identify what actions would be taken to mitigate those risks.	H	Agreed	TH1	At time of next procurement exercise.