

NHS Lothian
Internal Audit Report 2022/23
Local Procurement

Assurance Rating: Moderate Assurance

Date: 14 February 2023

Final Report

Contents

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Timetable

- Date closing meeting held: 16 January 2023
- Date draft report issued: 24 January 2023
- Date management comments received: 3 February 2023
- Date Final report issued: 14 February 2023
- Date presented to Audit and Risk Committee: 20 February 2023

This report has been prepared solely for internal use as part of NHS Lothian's internal audit service. No part of this report should be made available, quoted or copied to any external party without Internal Audit's prior consent.

Executive Summary

Introduction

NHS Lothian is required to comply with a framework of legislation including the Procurement Reform (Scotland) Act 2014, as well as various other related policies and its own internal governance.

In line with government policy and the relevant legislation, NHS Lothian procures goods and services competitively wherever possible. The procurement process complies with Health Scotland's Standing Financial Instructions, The Public Contracts (Scotland) Regulations 2015 and The Procurement (Scotland) Regulations 2016.

NHS Lothian seeks to achieve best value for goods and services that most closely meet its requirements. Contract award decisions are based on the assessment of a range of evaluation criteria specific to the goods or services being purchased. A regulated procurement is any procurement for goods or services with an estimated value for the life of the contract of £50,000 or more.

Scope

The objective of the audit was to check compliance against NHS Lothian procurement procedures for tenders undertaken within NHS Lothian. As such, we evaluated the adequacy of internal controls in place and reviewed the design and operating effectiveness of the controls to mitigate against the following potential risk areas:

- A Procurement Strategy and supporting policies and procedures may not be in place. As a result, staff are unaware of their responsibilities and do not know what steps are required of them in relation to procurement activities.
- Procurement processes and requirements may not be followed resulting in non-compliance and potential legal/reputational risks for the organisation.

Approach

Our audit approach was as follows:

- Obtain understanding of the key areas outlined in scope above, through discussions with key personnel, review of management information and walkthrough test, where appropriate.
- Identify the key risks relevant within Procurement.
- Evaluate the design of the controls in place to address the key risks.
- Test the operating effectiveness of the controls in place.

It is Management's responsibility to develop and maintain sound systems of risk management, internal control and governance and for the prevention and detection of irregularities and fraud. Internal audit should not be seen as a substitute for Management's responsibilities for the design and operation of these systems.

A complete list of staff involved in the audit and documents reviewed can be seen at Appendix 1.

Acknowledgments

We would like to thank all staff consulted during this review for their assistance and cooperation

Limitations in Scope

Please note that our conclusion is limited by scope. It is limited to the risks outlined above. Other risks that exist in this process are out with the scope of this review and therefore our conclusion has not considered these risks. Where sample testing has been undertaken, our findings and conclusions are limited to the items selected for testing. This report does not constitute an assurance engagement as set out under ISAE 3000.

Executive Summary

Summary of Findings

We have concluded that the controls in place in respect Local Procurement provides a **MODERATE** level of assurance. The table below provides a summary of the findings. The ratings assigned are based on the agreed internal audit rating scale (**Appendix 2**).

Detailed findings, recommendations and agreed management actions are found in Section 2 of this report.

Limited Assurance			
HIGH	MEDIUM	LOW	ADVISORY
-	1	3	1

Ref	Issue	H	M	L	A
2.1	<p>Risk area as per scope:</p> <p>Procurement processes and requirements are not followed resulting in non-compliance and potential legal/reputational risks for the organisation</p> <p>Declarations of interest are not being fully recorded for each regulated procurement</p>	-	1	-	-
2.2	<p>Risk area as per scope:</p> <p>A procurement Strategy and supporting policies and procedures are not in place. As a result, staff are unaware of their responsibilities and do not know what steps are required of them in relation to procurement activities</p> <p>The current procurement strategy has not been approved by the Finance and Resources Committee, with reporting to the same also incomplete</p>	-	-	1	-
2.3	<p>Risk area as per scope:</p> <p>Procurement processes and requirements are not followed resulting in non-compliance and potential legal/reputational risks for the organisation</p> <p>Tender waiver requests are not always submitted by staff with the authority to do so, with reporting of waivers not made to an appropriate Board Committee</p>	-	-	1	-

Ref	Issue	H	M	L	A
2.4	<p>Risk area as per scope:</p> <p>Procurement processes and requirements are not followed resulting in non-compliance and potential legal/reputational risks for the organisation</p> <p>Some documentation is not in place to support the procurement process and decision making</p>	-	-	1	-
2.5	<p>Risk area as per scope:</p> <p>Procurement processes and requirements are not followed resulting in non-compliance and potential legal/reputational risks for the organisation</p> <p>Tender waiver requests are not reported to an appropriate Board Committee</p>				1
TOTAL		-	1	3	1

Executive Summary

Main Findings

There is effective overall control of procurement and tendering within NHS Lothian through the use of PCS Tender. A Procurement Strategy is in place and supported by annual reporting to the Board's Finance and Resource Committee. Staff are trained and adhere to the Scottish Government Procurement Journey for all regulated procurements. Requests to waive tender requirements are documented. However, we identified areas for improvement including the-reporting of strategic objectives to the Finance and Resources Committee, alongside the completion of tender waivers and reporting of them to Committee.

These findings are discussed in full within our Management Action Plan below.

Follow Up

Approximately two weeks following issue of the final Internal Audit report, a member of the Audit Team will issue an 'evidence requirements' document for those reports where management actions have been agreed.

This document forms part of the follow up process and records what information should be provided to close off the management action.

The follow-up process is aligned with the meetings of the Board's Audit & Risk Committee. Audit Sponsors will be contacted on a quarterly basis with a request to provide the necessary evidence for those management actions that are likely to fall due before the next meeting of the Audit and Risk Committee.

Management Action Plan

Risk area as per scope: Procurement processes and requirements are not followed resulting in non-compliance and potential legal/reputational risks for the organisation

MEDIUM

Finding 2.1 – Declarations of interest are not being fully recorded for each regulated procurement

Control

It is a requirement of the Procurement Journey that when developing the procurement strategy and where any individual involved in the procurement exercise (tender review etc) has a financial or other interest in the outcome of the tender the officer must declare his or her interest and, if necessary, withdraw from all arrangements.

To support this a Declaration of Interest template form has been produced and is available through the Procurement Journey document library for completion during development of the procurement strategy. NHS Lothian have implemented their own Declarations of Interest template which is more comprehensive than the Procurement Journey template.

Observation

Sample testing carried out on three regulated procurements completed within the last two years (from a sample population of 15) has noted that declaration of interest documentation was only in place for one of the procurements, Also, while the forms were complete, had not been signed off by the Head of Procurement as this is not part of the current declaration of interest form.

Risk

Without documented declarations of interest, NHS Lothian may enter into a contract without knowing if staff had any interests in the successful supplier, which could increase the risk of bias and pose a threat to the reputation of the organisation.

Recommendation

All staff involved in each procurement exercise should be requested to declare any conflicts of interest and or gifts/hospitality received at the outset of the procurement exercise. All returns, including nil returns should be formally documented and stored for each procurement process. All forms should be signed off by the Head of Procurement.

Management Response

The current template used is an NHS Lothian specific template for Declarations of Interest. The Procurement Department use the more comprehensive NHS Lothian template rather than the Procurement Journey template because it is more comprehensive. We would be content to add a Deputy Head of Procurement approval to this template.

Management Action

All Procurement Officers will be reminded to ensure returns, including nil returns are formally documented and stored for each procurement process.

Responsibility

Associate Director of Procurement

Target Date

31 March 2023

Risk area as per scope: A procurement Strategy and supporting policies and procedures are not in place. As a result, staff are unaware of their responsibilities and do not know what steps are required of them in relation to procurement activities

LOW

Finding 2.2 – The current procurement strategy has not been approved by the Finance and Resources Committee, with reporting to the same also incomplete

Control

The Procurement Strategy (the Strategy) for NHS Lothian is in place covering the period 2020 to 2025. The Strategy sets out how NHS Lothian intends to ensure that its regulated procurements will:

- Contribute to the carrying out of the Board’s functions and the achievement of its purposes.
- Deliver value for money, and
- Be carried out in compliance with its duties under section 8 of the Procurement Reform (Scotland) Act 2014.

The Strategy has been developed to position procurement activity visibly within the organisation. Setting out clear, measurable objectives and priorities for improvement to be closely monitored.

The Board’s Finance & Resources Committee is responsible for approving the Procurement Strategy.

An annual report on the Strategy is prepared by the Associate Director of Procurement and presented to the Finance and Resources Committee for approval. The report and Strategy should be published on the NHS Lothian website, as required by the Procurement Reform (Scotland) Act 2014.

The purpose of the annual report is to aid visibility of NHS Lothian’s purchasing activities and allow the department to record and publicise its performance and achievements in delivering the Strategy. Progress against the Strategy Action Plan is also presented as an appendix to the Annual Report.

Observation

The Procurement Strategy for the period 2019-2024 had been presented to the Finance and Resources Committee on the 5 September 2019, where it was reviewed and approved.

However, the 2020-25 Strategy has not been presented to the Finance and Resources Committee. Although it is noted that the annual reports are being routinely presented.

It has also been noted that of the 47 Actions listed in the 2020-25 Strategy, progress against 34 is routinely reported through the Annual Reports. A further six actions are included in the annual report that were not originally recorded in the 2020-2025 Procurement Strategy, they were requested by the Finance and Resources Committee subsequent to the Strategy approval.

Risk

Failure to ensure regular review and approval of the Procurement Strategy carries the potential risk that the Strategy is not comprehensive, or adequately supportive of the Board’s organisation objectives.

Furthermore, without complete reporting against all of the strategic objectives, there is a risk that the Finance and Resources Committee is not receiving sufficient assurance that they are being met.

Recommendation

The Procurement Strategy should be provided to the Finance & Resources Committee following each update. Additionally, the annual reporting requirement should be amended to include the status of all of the objectives contained in the Strategy. Additionally, the Procurement Strategy should be updated to ensure that subsequent strategic objectives requested by Board Committee are recorded.

Management Response

Accepted.

Finding 2.2 - Continued

Management Action

The Procurement Strategy and Annual Procurement Reports will be provided to the Finance & Resources Committee following each update. Additionally, the annual reporting requirement will be amended to include the status of all of the objectives contained in the Strategy.

Responsibility

Associate Director of Procurement

Target Date

30 September 2023

Risk area as per scope: Procurement processes and requirements are not followed resulting in non-compliance and potential legal/reputational risks for the organisation

LOW

Finding 2.3 – Tender waiver requests are not always submitted by staff with the authority to do so, with reporting of waivers not made to an appropriate Board Committee

Control

The Boards Standing Financial Instructions advise that the Board's Director of Finance is authorised to waive the requirement to undertake tendering exercise under five circumstances, including:

- The timescale (from identification of need to the time of required delivery) genuinely precludes the appropriate form of market testing. This provision cannot be used if the limited timescale is due to a failure to anticipate the need for the supply.
- The supply or disposal is for goods and services of a special nature or character in respect of which it is not possible or desirable to obtain competitive tenders, and
- Specialist expertise is required and is available from only one source.

Procurement have developed a Standard Operating Procedure (Tender Waiver Checklist) which is reflective of the Standing Financial Instructions and designed to guide staff involved with the procurement process on the steps to be followed when requesting that tender procedures are waived.

Observation

In addition to the five circumstances under which the Director of Finance may waive the requirement to undertake tendering, listed in both the Standing Financial Instructions and the Procurement Standard Operating Procedure, the Standard Operating Procedure also advise staff to ensure that the signatory requesting the waiver is authorised to do so. Conventionally this should be an officer authorised to approve expenditure to the same value as the waiver, though this should be checked against the Scheme of Delegation.

13 Tender Waivers were requested and approved during 1 January 21 to 31 December 2021. A further 13 requests were approved for the same timeframe in 2022.

Review of six tender waiver request approvals identified two where the individual requesting the waiver did not have the appropriate delegated authority as per the Board's Scheme of Delegation and Authorised Signatory Database. All approvals reviewed had however been signed by the Board's Associate Director of Procurement and Director of Finance. Details of the two are noted below:

Description	Date	Value	Requestor	ASD Limit
Healios	30 March 2022	£89,772	Clinical Service Manager	£20,000
Fibroscan 430 mini + Echosens	20 February 2021	£85,035	Associate Nurse Director	£20,000

Risk

If the individual requesting the tender waiver is not authorised to do so according to the value of the contract and Scheme of Delegation, there is a risk that the Associate Director of Procurement and Director of Finance have been requested to approve the waiver inappropriately. Failure to adhere to the authorised signatory limits also carried the risk that all relevant personnel are not being made aware of the waiver request.

Recommendation

Management should ensure that the Procurement Standard Operating Procedure for tender waivers is appropriately followed and the requests are submitted to the Associate Director of Procurement and Director of Finance by staff authorised to do so according to the NHS Lothian Authorised Signatories Database.

Finding 2.3 - Continued

Management Response

Accepted.

Management Action

Management will ensure that the Procurement Standard Operating Procedure for tender waivers is appropriately followed and the requests are submitted to the Associate Director of Procurement and Director of Finance by staff authorised to do so according to the NHS Lothian Authorised Signatories Database.

Responsibility

Associate Director of Procurement

Target Date

31 March 2023

Risk area as per scope: Procurement processes and requirements are not followed resulting in non-compliance and potential legal/reputational risks for the organisation

LOW

Finding 2.4 – Some documentation is not in place to support the procurement process and decision making

Control

All procurement activity is directed through the Scottish Government Procurement Journey. This is a structured process and illustrates each step taken from the identification of a need or requirement to the management of the contract and supplier. Depending on the nature of the requirements, staff are advised to select the route most appropriate to their individual circumstances.

Route One provides guidance and templates for procurements that are low value (a total estimated value of under £50k excluding VAT). low risk and non-repetitive.

Route Two of the Procurement Journey provides guidance for regulated procurements, as defined in the Procurement Reform (Scotland) Act 2014, which are between £50k and the thresholds for goods and services

Route Three is designed for use by Procurement Officers. This route of the Procurement Journey provides guidance for regulated procurements for goods and services at the higher value regulated procurement threshold and above.

Observation

Sample testing was carried out on three regulated procurements completed within the last two years (from a sample population of 15).

Of the three contract awards reviewed, all had followed the appropriate procurement journey route, with clear strategies in place for each. However, it was noted that a Pre-Qualification Questionnaire (or Single Procurement Document) had not been completed for the contract for the delivery of a welfare advice service initially based at the Royal Hospital for Sick Children Edinburgh before transferring to the Royal Hospital for Children and Young people. However, there was evidence of tender review and evaluation supporting the contract award.

Furthermore, while a Contract Award Recommendation Report was in place for the term contract for Electrical Engineering and the tender review process for the Blackridge contract had included relevant personnel. No Contract Award Recommendation Report had been prepared to support the tender review exercise accompanying the Welfare Service Procurement. However, there was sufficient evidence from the tender evaluation exercise to confirm that all relevant personnel were involved in the contract award.

It is noted however that the financial commitments of each procurement had been approved at an appropriate level and in line with the Board's Scheme of Delegation.

Risk

Without adhering to all necessary requirements as laid out in the Scottish Government Procurement Journey, there is a risk that procurements are made without adequate transparency around the decisions for any supplier disqualification, or recommendations of award and request for approval, in addition to the management of any residual risks to the realisation of benefits and savings.

Recommendation

Management should ensure that where the Procurement Journey is followed in completing regulated procurements that all necessary steps are followed to support the selection of suppliers of goods and/or services.

Management Response

Accepted.

Finding 2.4 - Continued

Management Action

Management will remind staff that where the Procurement Journey is followed when carrying out regulated procurements that all necessary steps are followed, and documentation completed and in place to support the selection of suppliers of goods and/or services.

Responsibility

Associate Director of Procurement

Target Date

31 March 2023

Risk area as per scope: Procurement processes and requirements are not followed resulting in non-compliance and potential legal/reputational risks for the organisation

ADVISORY

Finding 2.5 – Tender waiver requests are not reported to an appropriate Board Committee

Control

All tender waivers are reported to an appropriate Board Committee in the form of a quarterly report which details each tender waiver, its value and who provided authority.

Observation

There is no current instruction within the Board’s Standard Financial Instructions to report all tender waivers approved by the Director of Finance to the appropriate Board Committee. This is a control that is in place and adhered by other NHS Boards (i.e. Ayrshire & Arran and NHS24). This adds a layer of governance as it allows non-executive directors to understand the level of expenditure that is going through the tender waiver process.

Risk

Tender waivers are not appropriately reported to the required committees, resulting in scrutiny not being provided by non-executive management.

Recommendation

Management should consider the reporting requirements for tender waivers and the most appropriate Board Committee to receive this information (e.g. Audit and Risk Committee). Thereafter the Board’s Standing Financial Instructions should be amended to include the new reporting requirement.

Management Response

Management will consider this recommendation.

Management Action

Management will consider this recommendation.

Responsibility

Associate Director of Procurement

Target Date

31 March 2023

Appendix 1 – Staff Involved and Documents Reviewed

Staff Involved

- Procurement Planning Manager

Documents Reviewed

- NHS Lothian Procurement Strategy 2019-2024
 - Finance and Resource Committee minutes approving 2019-2024 Strategy
- NHS Lothian Procurement Strategy 2020-2025
- Annual Procurement Reports
 - April 2019-March 2020 (with F&R Committee approval – September 2020)
 - April 2020-March 2021 (with F&R Committee approval – September 2021)
 - April 2021-March 2022 (with F&R Committee approval – September 2022)
- CEL 05 (2012) – Key Procurement Principles
- NHS Lothian Standing Financial Instructions and Scheme of Delegation
- CPN's and SPPN's issued during 2022
- Procurement SPPN and SPAN Log
- Procurement Governance of Spend PowerPoint presentation – May 2022
- Procurement Journey Guidance for Public Sector Buyers
- Procurement Department Intranet Pages
- Tender Waiver Standard Operating Procedure
- Tender Waiver Register
- Procurement Aggregated Spend Report 2012-2022
- Training records for all new starts recruited in 2022
- Gifts, Hospitality and Declaration of Interests Database
- Public Contracts Scotland contract notices 1 January 2021 – 30 November 2020
- Completed Waiver of Competitive Tender Approval forms covering 2022
- Awarded Contracts:
 - Strategies
 - Tender advertisement place through PCS Tender
 - Pre-qualification questionnaires
 - Tender evaluation
 - Declaration of Interests forms
 - Contract Award Recommendation Reports
 - Contract Award letters and notices

Appendix 2 – Our IA Report assurance levels

The table below shows the levels of assurance we provide and guidelines for how these are arrived at. We always exercise professional judgement in determining assignment assurance levels, reflective of the circumstances of each individual assignment.

Rating	Definition	When Internal Audit will award this level
Significant assurance	<p>The Board can take reasonable assurance that the system(s) of control achieves or will achieve the control objective.</p> <p>There may be an insignificant amount of residual risk or none at all.</p>	<p>There is little evidence of system failure and the system appears to be robust and sustainable. The controls adequately mitigate the risk, or weaknesses are only minor (for instance a low number of findings which are all rated as 'low' or no findings)</p>
Moderate Assurance	<p>The Board can take reasonable assurance that controls upon which the organisation relies to achieve the control objective are in the main suitably designed and effectively applied.</p> <p>There remains a moderate amount of residual risk.</p>	<p>In most respects the "purpose" is being achieved. There are some areas where further action is required, and the residual risk is greater than "insignificant".</p> <p>The controls are largely effective and in most respects achieve their purpose with a limited number of findings which require management action (for instance a mix of 'medium' findings and 'low' findings)</p>
Limited Assurance	<p>The Board can take some assurance from the systems of control in place to achieve the control objective, but there remains a significant amount of residual risk which requires action to be taken.</p>	<p>This may be used when:</p> <ul style="list-style-type: none"> There are known material weaknesses in key control areas. It is known that there will have to be changes that are relevant to the control objective (e.g. due to a change in the law) and the impact has not been assessed and planned for. <p>The controls are deficient in some aspects and require management action (for instance one 'high' finding and a number of other lower rated findings)</p>
No assurance	<p>The Board cannot take any assurance from the audit findings. There remains a significant amount of residual risk.</p>	<p>The controls are not adequately designed and / or operating effectively and immediate management action is required as there remains a significant amount of residual risk (for instance one Critical finding or a number of High findings)</p>

Appendix 2 - Continued

The table below describes how we grade our audit recommendations based on risks

Rating	Description	Possible features
<p>High</p>	<p>Findings that are fundamental to the management of risk in the business area, representing a weakness in the design or application of activities or control that requires the immediate attention of management</p>	<ul style="list-style-type: none"> ▪ Key activity or control not designed or operating effectively ▪ Potential for fraud identified ▪ Non-compliance with key procedures / standards ▪ Non-compliance with regulation
<p>Medium</p>	<p>Findings that are important to the management of risk in the business area, representing a moderate weakness in the design or application of activities or control that requires the immediate attention of management</p>	<ul style="list-style-type: none"> ▪ Important activity or control not designed or operating effectively ▪ Impact is contained within the department and compensating controls would detect errors ▪ Possibility for fraud exists ▪ Control failures identified but not in key controls ▪ Non-compliance with procedures / standards (but not resulting in key control failure)
<p>Low</p>	<p>Findings that identify non-compliance with established procedures, or which identify changes that could improve the efficiency and/or effectiveness of the activity or control but which are not vital to the management of risk in the business area.</p>	<ul style="list-style-type: none"> ▪ Minor control design or operational weakness ▪ Minor non-compliance with procedures / standards
<p>Advisory</p>	<p>Items requiring no action but which may be of interest to management or which represent best practice advice</p>	<ul style="list-style-type: none"> ▪ Information for management ▪ Control operating but not necessarily in accordance with best practice



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