

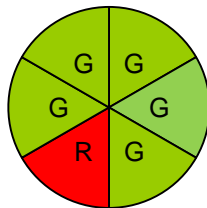
Internal Audit



Private and Confidential Whistle-blowing allegation into Contractor A

April 2017

Report Assessment



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Introduction

During February 2017 an anonymous whistle-blowing allegation was received by the Chief Executive's office. This followed an initial letter to and NHS Lothian Director outlining the same concerns. The allegation claimed that NHS Lothian are using the services of an organisation, Contractor A, that is not fit to carry out the work; that Contractor A provides the relevant Manager with multiple gifts and hospitality events; and that the relevant Manager has a relationship with a contact for a separate organisation, organisation B, who does business with NHS Lothian.

An initial review was undertaken jointly by the Finance and Procurement Departments looking specifically in to the spending patterns and approval of spend. This found that there has been circa £300,000 annual spend with Contractor A, with circa £18,000 (6%) in the last year being approved by the named individual in the whistle-blowing allegation. The Finance and Procurement department did not find any evidence from this review of irregular spend or unusual sign off. Nevertheless, given the nature of the allegations, it was determined that an internal audit investigation should be undertaken to supplement the financial data extracted and reviewed.

Scope and approach

As internal audit we will investigate the specific concerns raised in the letter (s) namely:

1. Contractor A - How the Relevant Department (s) have gained sufficient assurance over the accreditation and/or qualification of the supplier.
2. Associated hospitality and/or gifts with Contractor A over the last 3 years and whether this has been declared in accordance with NHS Lothian's gifts and hospitality policy
3. The contracting arrangements in place for Contractor A including: when was last tendered; nature of the services provided and how these are procured; the sign off of invoices and payments; use of Pecos and NHS Lothian procurement.
4. The nature of the work undertaken
5. the named individuals and the perceived conflicts of interest/personal interest in respect of Organisation B

Our internal audit work was undertaken through meetings with key personnel and reviewing documentation including reviewing processes and where relevant email trails. It did not involve detailed substantive audit testing or formal interviews with the individuals named in the letter. As part of our investigation we spoke with individuals in the procurement department; finance department; and relevant departments. Our review was in respect of establishing facts and consideration of documentary evidence. We did not meet with the individuals directly named.

Acknowledgements

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

Executive Summary

Conclusion

We were unable to confirm or refute if any fraud has taken place in regards to Contractor A.

However we did note that there are areas of inadequate governance and a potential lack of documentation in regards to tendering, gifts and hospitality which have resulted in one 'critical' rated action and two 'significant' rated actions. These findings and associated recommendations are designed to improve the overall control environment. With procurement staff we obtained and reviewed the listing of expenditure with Contractor A over the last 12 months. Expenditure is all for small values with no unusual descriptions associated with the spend per the purchase ledger, and expenditure has been approved by a number of individuals within the relevant departments.

Summary of Findings

The table below summarises our assessment of the adequacy and effectiveness of the controls in place to meet each of the objectives agreed for this audit. Definitions of the ratings applied to each action are set out in Appendix 1.

No.	Audit activity	Assessment	Number of actions by action rating			
			Critical	Significant	Important	Minor
1	How the relevant Department (s) have gained sufficient assurance over the accreditation and/or qualification of the supplier.	Green	-	1	-	-
2	Associated hospitality and/or gifts with Contractor A over the last 3 years and whether this has been declared in accordance with NHS Lothian's gifts and hospitality policy	Green	-	1	-	-
3	The contracting arrangements in place for Contractor A including: when was last tendered; nature of the services provided and how these are procured; the sign off of invoices and payments; use of	Red	1	-	-	-

	Pecos and NHS Lothian procurement.					
4	The nature of the work undertaken	Green	-	-	-	-
5	The named individuals and the perceived conflicts of interest/personal interest in respect of Organisation B	Green	-	-	-	-

Audit Activity Ratings

Action Ratings	Definition
Red	Fundamental absence or failure of controls requiring immediate attention (60 points and above).
Amber	Control objective not achieved - controls in place are inadequate or ineffective (21 – 59 points).
Green	Control objective achieved – no major weaknesses in controls but may be scope for improvement (20 points or less).

Main Findings

One 'critical', and two 'significant' rated finding were raised as a result of this review. The one critical finding was:

- Contractor A are being paid to provide services to NHS Lothian without having undertaken a tender process, or having been subject to oversight from the Procurement Department. This is despite providing in excess of £300,000 of services annually.

Further details of each of these points, in addition to three minor points, are set out in the Management Action Plan, at page four of this report.

Management Action Plan

Audit Activity 1: How the relevant Departments have gained sufficient assurance over the accreditation and/or qualification of the supplier.

1.1: There is no documented assurance available to confirm what checks have been undertaken over the accreditation and / or qualification of Contractor A.

Significant

Observation and risk:

There has been no documented assurance provided over the accreditation of the supplier. Additionally there has been no procurement or tender process followed (see Finding 3.1). This is in breach of NHS Lothian's Standing Financial Instructions section 7 and the Scheme of Delegation, national requirements and best practice. We do note however that the Contractor A website does claim that the Contractor has a number of relevant qualifications and accreditations.

In addition, there is a quote from a Lothian staff member on Contractor A website endorsing services. This quote is very positive about the services provided. This quote is from an individual and it is unclear if and how this was authorised and may be seen to overly promote the services of one contractor.

The lack of confirmation checks of accreditation status increases the risk that work is being carried out on NHS Lothian's behalf without the necessary skills and / or regulatory competence, potentially exposing NHS Lothian to poor workmanship and providing poor value.

Recommendation:

As part of the procurement and tender process, organisations that are undertaking work for NHS Lothian should have their accreditation and qualifications confirmed and details of these checks should be documented – This would ensure full compliance with the Board's standing financial instructions and scheme of delegation. No quotes from individuals should be provided on NHS Lothian's behalf to endorse services.

Management Response:

Agreed.

Management Action:

To give immediate assurance, in advance of tendering this work the Procurement Team will support the relevant departments in ensuring current accreditation and qualifications are as robust as would be in a Pre-Qualification process for tender.

It is not unconventional to have individual employees endorse supplier's services with careful approval but the quote noted in this report is inappropriate. The Associate Director of Procurement will liaise with the relevant parties to agree timing of removal of this endorsement.

Responsibility: Associate Director of Procurement	Target date: 31st May 2017
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Audit Activity 2: Associated hospital and/or gifts with Contractor A over the last 3 years and whether this has been declared in accordance with NHS Lothian's gifts and hospital policy	
<p>2.1 We found no documented evidence that hospitality and/or gifts had been accepted or provided to Contractor A. However concern was raised by employees spoken to that the gifts and hospitality register may be incomplete and infrequently used. We cannot therefore say with certainty whether or not this accusation has occurred.</p>	Significant
<p>Observation and risk:</p> <p>We obtained a copy of the centrally held Gifts and Hospitality register from the procurement department. The register contained five separate declarations (of which one is repeated four times for four employees who attended the event) resulting in a total of nine declarations covering the period from December 2015 to March 2017. From further discussion with staff across relevant departments and Finance it was noted that there have been instances of under reporting of hospitality and / or gifts on the central register, with staff across all departments spoken with mentioning that the register is not potentially always completed.</p> <p>We note that over the last year NHS Lothian has undertaken significant work in relation to the register for gifts and hospitality and NHS Lothian policy and a revised form is available on Finance online and updated arrangements communicated in the February 2017 team brief.</p> <p>With an incomplete register of hospitality and / or gifts there is a risk of an absence of transparency and as a result any related challenge to decision making will be difficult to defend.</p>	
<p>Recommendation:</p> <p>While a database to record the receipt of hospitality, entertainment and declaration of interests is in place the Head of Procurement should communicate the requirement for the Procurement team to be notified about the acceptance of hospitality & entertainment across the organisation. Additionally methods which could make it easier for staff to update the database (for instance by allowing staff to update, but not remove, entries directly on the database) should be considered.</p>	
<p>Management Response:</p> <p>Where proposed hospitality & entertainment is not provided by a public sector body or is</p>	

beyond the scale that the NHS Board is likely to provide, then it has to be approved in advance by a manager who has authority to do so (as set out in Finance Online). Consequently it would not really be appropriate for staff to update the database directly. We do not wish to encourage a perception that accepting anything is OK as long it is declared.

It is accepted that the further steps are required to promote awareness of this subject and the process to be followed. The Procurement Anti Bribery Policy and Explicit Public Statement on Anti Bribery are placed on our internet site to raise awareness.

<http://www.nhslothian.scot.nhs.uk/WorkingWithUs/procurement/ProcurementPolicy/Pages/Anti-Bribery.aspx>

Management Action:

A communication plan shall be developed to raise awareness of business conduct issues, and the procedures to be followed. This will include existing assurance actions on the Anti Bribery Act.

**Responsibility: Corporate Governance
Manager**

Target date: 31 August 2017

Audit Activity 3: The contracting arrangements in place for Contractor A including: when was last tendered; nature of the services provided and how these are procured; the sign off of invoices and payments; use of Pecos and NHS Lothian procurement.

3.1 Contractor A are being paid to provide services to NHS Lothian without having undertaken a tender process or having been subject to oversight from the Procurement Department.

Critical

Observation and risk:

Contractor A provide in the region of £300,000 worth of services to NHS Lothian each year, without having gone through a tendering process. This is in breach of NHS Lothian's own standing financial instructions and scheme of delegation, which requires tenders to be received for the provision of services greater than £50,000. When discussed as part of our review it was noted by e-Health the reason it has not been tendered was due to historic procurement practices, and they were aware of the need to tender for the services provided.

Contractor A are not unique in providing services to NHS Lothian without having undertaken a tendering process, with at least one other organisation having been identified by the Procurement Department as providing greater than £50,000 in services but not having gone through a tender. The Procurement Department have, within the last 12 months, started working with departments within NHS Lothian to increase the number of tenders. Specifically the Procurement Department have been working with the relevant department to get Contractor A to tender since October, however the terms of a specification for this tender have yet to be agreed. However, while Procurement are working with departments to increase the amount of tenders there is no documented improvement plan in place specifying how this is to be achieved.

The lack of tendering for all high value services across NHS Lothian increases the risk that fraudulent activity could be undertaken and / or that services are not providing best value.

Recommendation:

A documented improvement plan should be prepared and agreed with the Board to ensure that all future spend by NHS Lothian in excess of £50,000 has been tendered for. The improvement plan should include how each department should tender for services, including whether each department can run their own tendering process (i.e. if the department involves specialist skill areas) or has to go through the Procurement Department. Where it is determined that a department can run their own tendering process there must be sufficient oversight from the procurement department to ensure that requirements are being followed.

Management Response:

A review of Non-pay expenditure that has not been tendered has been underway for a number of years and the Procurement Team have supported departments who historically managed their own contracts in either undertaking tendering activity or training department staff in compliant processes. Available capacity to undertake this work has set the pace for

improvement. A Transformational Procurement Plan is currently being developed with the aim of expanding financial savings through Better Buying, and which will also aim to ensure full organisational compliance on issues of governance.

Management Action:

A documented improvement plan will be developed alongside the Transformational Procurement Plan.

Responsibility: Associate Director of Procurement

Target date: 31st July 2017

Audit Activity 4: The named individuals and the perceived conflicts of interest/personal interest in respect of organisation B

6.1 No finding was raised for this audit activity.

n/a

Observation:

A review of activity with Organisation B by the Procurement and Finance Departments identified that there has only been one transaction, which was from 2013. This was not authorised by any of the individuals named in the allegation. We would recommend however that individuals indicate any potential conflicts of interest that they may have, and that this is tracked centrally to assist with procurement processes. We note that a finding was raised in the June 2016 'Compliance with Standards of Business Conduct' review regarding improving the registers of interest process and so we have not raised a separate finding as part of this review.

Appendix 1 - Definition of Ratings

Management Action Ratings

Action Ratings	Definition
Critical	The issue has a material effect upon the wider organisation – 60 points
Significant	The issue is material for the subject under review – 20 points
Important	The issue is relevant for the subject under review – 10 points
Minor	This issue is a housekeeping point for the subject under review – 5 points

Control Objective Ratings

Action Ratings	Definition
Red	Fundamental absence or failure of controls requiring immediate attention (60 points and above)
Amber	Control objective not achieved - controls in place are inadequate or ineffective (21 – 59 points)
Green	Control objective achieved – no major weaknesses in controls but may be scope for improvement (20 points or less)