



# Consultancy City of York Council

**Strictly Private and Confidential**

For: Director of C&CS, Head of Corporate Finance and Commercial Procurement  
Manager  
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# **1 INTRODUCTION / BACKGROUND**

- 1.1 In the past two years the council has received a number of Freedom of Information (FOI) requests regarding its expenditure on consultants, in particular consultant B.
- 1.2 As part of one of the most recent FOI requests (received by the council on 7 April 2016) a number of specific questions were asked about the way in which consultant B's contract had been procured. The original request was made using the WhatDoTheyKnow website so attracted interest from other residents. Concerns were subsequently raised with the members of the Audit & Governance Committee. The vice-chair of the Audit & Governance Committee in turn asked Internal Audit to investigate the matter further (the request was received by the Head of Internal Audit on 29 July 2016). The Head of Internal Audit discussed the concerns with the Director of C&CS and it was agreed that a detailed review should be undertaken.
- 1.3 The council's external auditors, Mazars also received an objection to the 2015/16 statement of accounts on 11 August 2016. The objection covered a number of issues including the council's apparent failure to carry out a procurement exercise prior to appointing consultant B and company C. The objection referred to the FOI request and related correspondence on WhatDoTheyKnow.

## **2. FINDINGS**

### **Consultant B and Company C**

- 2.1 Fifteen transactions [not including one cancelled PO] were identified on the council's financial system for consultant B between June 2013 and September 2014. The total value of these invoices was £67,254 (excluding VAT). The invoices were made up of claims for varying amounts of 'communications consultancy' charged at £400 a day. One invoice included £54 for the reimbursement of expenses. The payments equated to 168 days of work in the period. All transactions were invoices supported by purchase orders.
- 2.2 A further 11 invoices for consultant B's company, 'company C', were paid between 1 December 2014 and March 2016. The total value of these payments was £106,804.96 (excluding VAT). Most of the payments related to consultancy work charged at £400 a day. Other payments included 'costs and expenses associated with the MAB14 conference and UNESCO designation' - £1,274.96 and 'marketing/design resources for Services to Schools' - £5,000. The payments equated to approximately 250 days of work in the period.

### **Work performed by consultant B**

- 2.3 Several areas of work have been identified as having been performed by consultant B either in his capacity as a self-employed contractor or through his company, 'company C'. These include:

- UNESCO City of Media Arts bid
- Rewiring transformation programme
- Support for Services for Schools
- All About Projects

2.4 There is evidence that consultant B was directly involved in these assignments, including documents being produced and passed back and forth for review, as well as staff testimony that consultant B was undertaking the work. The UNESCO bid was ultimately successful and the Rewiring transformation programme and new project management procedures (All About Projects) have been implemented by the council.

2.5 There is also reference on invoices and documentation to consultant B being involved in general support for the Communications team. This is more difficult to evidence as it appears that consultant B worked under the direction and management of employee A within the Office of the Chief Executive rather than as part of the Communications team. Consultant B did have a visible role within the council and interacted with many staff, including the Chief Executive and other chief officers.

### **Procurement**

2.6 The response by the council to an FOI request dated 27 October 2014, identified employee A as the person responsible for the expenditure with consultant B, and identified the purpose of his appointment as being:

*“to work on a variety of communications projects including the Re-wiring Public Services Programme and Unesco Media Arts”*

The response listed the individual payments that made up the £67,254 paid to consultant B as an individual (see paragraph 2.1 above). The response to a further FOI request submitted on 18 July 2016, asking for all contracts procured by employee A in each of the last three years, did not list consultant B or company C. This was because the information had already been supplied in response to previous FOI requests, including by the same requestor.

2.7 Discussions with council officers during the Interims, Specialists and Consultants audit carried out in 2015/16 as well as enquiries made as part of this review identified employee A as the chief officer responsible for engaging consultant B. The expenditure was charged to his budgets and he authorised most of the payments to both consultant B and company C<sup>1</sup>. However, no documentation was available to support the procurement process undertaken to appoint consultant B or to subsequently extend his engagement. The response to a FOI request received by the council on 18 July 2016 stated that

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<sup>1</sup> One invoice was authorised by employee K

historical information on tender processes is not held for more than one year. However, the absence of documentation relating to the procurement process represents a breach of the council's Contract Procedure Rules. The response to the FOI request is also incorrect in this respect as Section 4.5 of the Contract Procedure Rules states:

*"Full records of all contract documentation, quotations, estimates, tenders and any other correspondence pertinent to the award or acceptance of a Contract must be kept by Commercial Procurement for the duration of the Contract and a minimum of six years after the Contract has been concluded or twelve years after the Contract has been concluded where it is executed under common seal as a deed."<sup>2</sup>*

- 2.8 Employee A ceased to be employed by the council on 31 March 2016. As employee A was no longer in post and had not retained any documentary evidence to support the procurement process a search of employee A's Outlook email account was undertaken for relevant information using key words such as 'quotation', 'tender' and 'contract' as well as terms relating to consultant B and company C. Only a small number of emails on any subject remained from before 2014 and none were found that related to a quotation exercise to select consultant B. Emails appear to have been deleted en masse rather than selectively and so the deletion is unlikely to represent a deliberate attempt to conceal evidence. Payments to consultant B as an individual started prior to 2014. Given the absence of any emails on the subject it is unlikely that written quotations will be located for the appointment of consultant B even if they were originally obtained by employee A.
- 2.9 As noted in paragraph 1.3 above, Mazars received an objection to the 2015/16 statement of accounts. Following this, the Head of Corporate Finance and Commercial Procurement Manager contacted both ex-employee A and consultant B. Verbal confirmation was provided to her that three written quotations had been obtained before consultant B was appointed.
- 2.10 As part of this review ex-employee A was contacted again and asked to provide further information regarding the procurement processes followed to appoint consultant B and company C. To date no response has been received.
- 2.11 The lack of information and evidence available after employee A's departure emphasises the need for procurement information to be retained centrally, in line with the Contract Procedure Rules. The council has acknowledged that the contracts relating to consultant B and company C were not recorded on its contracts register. This omission was recorded as a breach of the Contract Procedure Rules and reported to the C&CS management team in May 2016. This led to further discussions and actions being agreed including;
- A review of the authorisation levels of all managers

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<sup>2</sup> Section 4.5 Records

- Delivery of a comprehensive training programme for all staff
- A review of the contract procedure rules
- A strengthening of the procurement function with additional resources

2.12 The first invoice from consultant B under the name of company C is dated December 2014. No written quotations or reference to any related procurement have been found. A document entitled 'Consulting Agreement', dated 22 October 2014, between the council and company C exists. However, it is unclear who saw the document or if it was agreed and signed. The agreement was for 6 months, and the services to be delivered as set out in the agreement were:

- *Marketing and communications. These services will include the strategy and planning for the internal and external communication of the Rewiring transformation programme, overseeing its execution, and developing new platforms for future dialogue with residents, communities, businesses and staff. It will also involve assisting the Communications team with other projects, such as the UNESCO City of Media Arts application, as and when required.*
- *The Services will also include any other tasks which the Parties may agree on. The Professional Service Company hereby agrees to provide such Services to the Customer.*

2.13 An email was also located in employee A's emails which had been sent from consultant B to XXXXXXXXX, Procurement on 22 April 2015 (6 months after the date of the Consulting Agreement). The email was copied to employee A and stated:

*"I am contracted by employee A to work in the Communications team. I've been asked to send you deliverables for a new contract - please find these below.*

***Internal and external communications planning and delivery for the Rewiring transformation programme***

- *Oversee and co-ordinate internal communications plan for the organisation (Q2 2015)*
- *Launch of Rewiring 'champions' and support delivery of project training (Q2 2015)*
- *Define, development and deliver Phase 2 of Rewiring communications (Q2 2015) including an Employee Handbook, refreshing organisation values, vision, priorities, expectations and HR support*
- *Brief and co-ordinate supporting marketing activity for new [www.york.gov.uk](http://www.york.gov.uk) website (Q2 2015)*
- *Source and publish minimum of 10 new Rewiring articles per month to keep stakeholders up-to-date and engaged with the programme (as and when required)*

- *Assist CMT and Service to City with toolkits and presentations to share progress with the organisation (as and when required)*
- *Contribute to Cabinet reports and community engagement on individual proposals (as and when required)*
- *Define, development and deliver Phase 3 of Rewiring communications (Q3 2015)*
- *Define, development and deliver Phase 4 of Rewiring communications (Q4 2015/Q1 2016)*

***Support internal and external communication of new Council Plan (May/June/July 2015)***

***Support internal and external communication plan for the new Community Stadium (Q4 2015/Q1 2016, key deliverables to be confirmed)***

***Support internal and external communication plan for major brownfield developments (Q4 2015/Q1 2016, key deliverables to be confirmed)***

***Ongoing support for Communications team on other projects (as and when required)***

***Support for community engagement and consultations on other projects (as and when required)”***

This contract could not be found during the Interims, Specialists and Consultants audit in 2015/16. No information was found during the search of employee A's emails relating to the end of the Consulting Agreement, any new procurement exercise or the decision to continue to engage consultant B / company C after April 2015. Further investigations as part of this review have been unable to uncover any records elsewhere. The Interims, Specialists and Consultants audit, finalised in November 2016 made a number of recommendations about the need to improve the existing procedures for engaging consultants.

### **Financial Regulations Breaches**

- 2.14 The payments to consultant B and company C together totalled in excess of £174k. As the elements of work were similar in nature consideration should have been given to possible aggregation of spend. Taken on its own, the work undertaken by consultant B as a self employed contractor required council officers to follow the procedures set out in the Contract Procedure Rules for expenditure between £5,000 and £100,000. Officers are required to invite a minimum of three written quotations from suitable potential suppliers (see appendix 1 for the relevant extract from the Contract Procedure Rules). No evidence has been found to support the claim that the requirements of the Contract Procedure Rules were followed (see paragraph 2.9 above), and no members of staff spoken to as part of this review were aware of such an exercise being undertaken. At best this represents a failure to be transparent and to retain all relevant procurement documentation. However, it seems

likely that there was a failure to follow proper procurement processes including obtaining written quotations, ensuring sufficient potential suppliers were approached and agreeing a formal contract.

- 2.15 Excluding possible issues relating to aggregation of spend, the work undertaken by consultant B through his company, 'company C' required council officers to follow the procedures set out in the Contract Procedure Rules for expenditure over £100,000. During the period the requirements as set out in the Contract Procedure rules underwent revision. However, the minimum requirement at the time was that 3 written tenders should be obtained. No evidence of such an exercise has been located, or supplied to the Corporate Procurement team when requested. As with the expenditure outlined in paragraph 2.14 above, this is at best a failure to be transparent and to retain all relevant procurement documentation. However, it seems likely that there was a failure to follow proper procurement processes including obtaining written quotations, ensuring sufficient potential suppliers were approached and agreeing a formal contract.
- 2.16 As noted above, the combined expenditure on services provided by consultant B and company C exceeded £174k. The current EU threshold for the procurement of services is £164,176. As the expenditure covered several individual and discrete projects it is unlikely that there has been a breach of EU regulations. However, no evidence was found of the issue of aggregate spend being considered or its possible impact with regards to the council's Contract Procedure Rules or EU procurement regulations.
- 2.17 The Contract Procedure Rules require officers to consider whether there is an appropriate Internal Service Provider, existing Contract, approved Framework Agreement or Dynamic Purchasing System which could be used prior to any procurement exercise. In the case of consultant B no written record could be found that these options had been considered, although the expenditure started prior to the earliest emails remaining in employee A's Outlook account. An email sent by employee A to the then Chief Executive, Corporate Director – C&CS and Assistant Director – Health and Wellbeing dated 17 June 2015 was located that attempted to justify the use of several of consultants after they had been engaged to carry out work for the council. However, the email did not mention consultant B. As a minimum we would have expected employee A to prepare a business case for his line manager setting out the budget, required deliverables, timescales etc before considering which procurement route to follow for each consultant. In addition, we would have expected employee A to seek professional advice from the council's Corporate Procurement Team to assess the options available. There is no evidence that this was done.
- 2.18 The last PO for consultant B was approved by employee A in March 2016. This PO was raised and paid prior to the work being completed. This represents a breach of the council's Financial Regulations. Part 4 section 21 of the Financial Regulations state:

*“Payments in advance must be avoided except where this is the accepted practice for the type of expenditure involved”*

No justification for authorising the payment in advance was given. There is also no obvious reason why such a payment was required as consultant B’s invoices had all previously been paid in arrears.

- 2.19 Although there is a lack of clarity surrounding the rationale for appointing consultant B and the procurement process followed there is evidence that he undertook work for the council, as outlined in paragraph 2.3 above. We have not attempted to assess whether the work done and expenditure incurred represented value for money although we would have expected employee A to do this as the commissioning manager.
- 2.20 Attempts were made to obtain information showing the number of times and dates that consultant B was at the West Office from door entry logs and network access logins, however this information is only retained for 3 months and could not be provided.
- 2.21 In general there was no evidence of any formal contract monitoring for the work being done by consultant B. We would have expected to see regular progress and completion reports. There was also a general lack of formality with the working arrangements for consultant B and no apparent recognition within the council that his services were costing the council £400 per day. The impression was that consultant B was acting as a council employee, attending meetings and providing support as requested. An exception to this was for the last assignment – Services for Schools which was charged at a fixed rate.

### **Response of other Council Officers**

- 2.22 Several opportunities for the council to identify errors in the procurement process were missed. Employee A received an email from XXXXXXXXX Officer about company C in March 2015. This was 5 months after the date on the draft Consulting Agreement (see paragraph 2.12 above). The XXXXXXXXX Officer asked:

*“you have authorised an order for £30k for the above supplier and I would like to know how you procured the service for working in the communication team and if you have a contract in place please?”*

Employee A responded to say he would need to investigate. However, no further email correspondence on this subject was found. This email came after another email on the same day from the same XXXXXXXXX Officer asking:

*“I am just looking at my monthly purchase order report and notice that you have authorised orders for the above supplier for £15,500 covering November until March 2015 for consultant D to work on a business case for Building Services and an invoice for £4,750 for Transformation support services for October 2014. Can you tell how you procured these services, was it three quotes? If so do you have the information on the other quotes please? Also as*



*we have to make sure all our contracts over £5k are on a contracts register for the public to see as per the data transparency act have you got a contract for this work?"*

The response from employee A was:

*"Just part of the ongoing work that V4 have done for the transformation programme. There [sic] work has now finished."*

No further responses to these have been located using a related email search of employee A's emails.

- 2.23 These emails indicate that the processes within the council that identify out of contract spend were operating in this case. Employee A also received emails from the Head of Corporate Finance & Commercial Procurement Manager asking for information on expenditure in August 2015; and an email from the Head of Business HR, originating from the Director of C&CS in August 2015 to confirm on behalf of members that the consultants had now left the council, to which employee A responded with an update on the status of several consultants and ended his response with:

*"So the only outstanding one is consultant B. I will review with Debbie. We are using the itravel monies to pay him and will absorb the itravel work in the main comms team. But I am aware that he has to leave, as is consultant B."*

Employee A also received enquiries from a councillor in August 2015, who subsequently chased a response in February 2016 enquiring on the work being undertaken by consultant B, and when consultant B would be finishing. Employee A replied but initially provided limited information.

- 2.24 These instances of correspondence show that employee A received some challenge over the expenditure on consultant B, and that there were attempts by council officers to put proper documentation in place. Ultimately these were unsuccessful.

### **Other expenditure to related suppliers**

- 2.25 The council has made payments to several organisations connected to consultant B:
- £4,563.13 to company E between April and September 2010
  - £101,234.99 to company F between January 2012 and December 2014
  - £45,706.84 to company G between June 2013 and December 2015
- 2.26 The company E transactions relate to a magazine in which the council paid for content. Consultant B was a founding director of company E, which was incorporated in September 2009 and dissolved in December 2011. There were 11 payments for adverts in the magazine, totalling £4,563.13. The costs were coded to 4 departments – Arts and Culture, Transport Planning, Sport & Active Leisure and School Services. Employee A's name does not appear on

the invoices. One of the invoices on FMS has the narrative '1st of 2nd paym – UNESCO Creative City bid' (dated 1/11/2010). The invoice itself has the narrative 'Feature in xx Magazine – Nov/Dec issue'. There does not appear to have been a 2nd payment. As the expenditure was under £5,000 the relevant departments were required to obtain best value and make of note of their decisions. There was no requirement to obtain written quotations.

- 2.27 Consultant B was also a founding director of company F from August 2011 until his resignation in January 2014. There are 54 transactions recorded in the financial ledger for company F from January 2012 to December 2014, totalling £101,234.99. Most of the transactions relate to the CYC content in the xx magazine. The transactions are broken down by Directorate, number and amount in the table below:

Directorate	Number	£
CANS	16	£4,495
C&CS	2	£5,250
CES	14	£8,320
OCE	22	£83,169.99

As a minimum we would have expected 3 written quotations to be obtained but given the likely level of expenditure over the period formal tenders would have been more appropriate. Any exercise, if it was undertaken by employee A would have occurred in the time in which no emails remain (see paragraph 2.8 above).

- 2.28 Consultant B was also a founding director of company G from February 2013 until his resignation in June 2014. There are 9 transactions for company G between September and December 2015, totalling £45,706.84. Two of these were coded to the OCE- Office of the Chief Executive directorate, with the others coded to CES – Transport and Development.

One of the POs was marked 'FAO employee A' with a narrative of 'Video production for Lendal Bridge trial' on the PO and 'Payment to consultant B for Lendal Bridge video' on FMS, with a value of £10,906.84. The other payments related to videos for events involving the council such as the 20 miles an hour campaign, the International Fairness Conference and iTravel. Four of the POs, totalling £21,406.84 were raised during the period consultant B was at company G. This level of expenditure required 3 written quotations to be obtained. During the search of employee's email account for 'tender' it was found that company G had attempted to tender for the webcasting of council meetings following the departure of employee A, however they were not successful.

- 2.29 A search was made of the council's systems for other companies connected to consultant B as listed at Companies' House, (company H, company I, and company J). No other transactions were identified. Searches were also made using addresses, post codes, VAT numbers and bank account details from consultant B and company C. No other transactions were identified.





## **APPENDIX 1 – CONTRACT PROCEDURE RULES EXTRACTS**

### **9.3 Procurement over £5,000 and under £100,000**

9.3.1 In relation to all procurements with a value over £5,000 and under £100,000 Officers should, in conjunction with Commercial Procurement, consider whether there is an appropriate Internal Service Provider, existing Contract, approved Framework Agreement or Dynamic Purchasing System which can be used.

9.3.2 Where no appropriate Internal Service Provider, existing Contract or approved Framework Agreement or Dynamic Purchasing System exists, if the estimated value of a Contract exceeds £5,000 but is less than £100,000 a minimum of three written quotations must be invited from suitable potential providers. Efforts should be made to ensure that a diverse group of suppliers are asked to quote using the following principles:

- (a) Where possible, ensuring Small and Medium Enterprises (SMEs) are invited to quote;
- (b) Where possible, ensuring local suppliers are invited to quote;
- (c) Not just inviting the same group of suppliers who have previously quoted for this or previous similar work;
- (d) Looking for novel or new suppliers where suitable

9.3.3 The written quotes must be obtained and documented in accordance with proper record keeping set out in Rule 4 and in accordance with the requirements of Rule 12.

9.3.4 All potential providers invited to submit quotations shall be provided in all instances with identical information and instructions.

9.3.5 The evaluation of the quotations shall be carried out by Authorised Officers.

9.3.6 Regardless of the procurement method used, the Delegated Decision to undertake a procurement of this value will generally be an Authorised Officer decision unless the decision maker considers that it will have significant impact. This is just general guidance and Authorised Officers should have regard to the Council's Constitution when deciding what kind of Delegated Decision applies.

#### 9.4 Procurement over £100,000

- 9.4.1 In relation to all procurements with a value in excess of £100,000 Officers should, in conjunction with Commercial Procurement, consider whether there is an appropriate Internal Service Provider, existing Contract or approved Framework Agreement or Dynamic Purchasing System which can be used.
- 9.4.2 Where no appropriate Internal Service Provider, existing Contract, approved Framework Agreement or Dynamic Purchasing System exists, competition is required for procurements over £100,000.
- 9.4.3 Where there are sufficient numbers of potential Providers, at least four written tenders shall be invited. Efforts should be made to ensure that a diverse group of suppliers are asked to tender using the following principles:
- (a) Where possible, ensuring Small and Medium Enterprises (SMEs) are invited to quote;
  - (b) Where possible, ensuring local suppliers are invited to quote;
  - (c) Not just inviting the same group of suppliers who have previously quoted for this or previous similar work;
  - (d) Looking for novel or new suppliers where suitable
- 9.4.4 The tendering process shall be conducted in accordance with the Council's detailed procedure rules set out in the Procurement Toolkit. Authorised Officers should consult with Commercial Procurement to establish the most appropriate tendering process/procurement route which will be determined on a case by case basis (depending on a number of factors including but not limited to the scope, value and technical requirements of the procurement).
- 9.4.5 All tenders and awards must be documented in accordance with Rule 4.
- 9.4.6 Where the estimated contract value reaches the relevant EU Threshold, Rule 9.6 will also apply and officers must seek guidance from the Procurement team before commencing any procurement process
- 9.4.7 Where the estimated contract value reaches £250,000 or more, Rule 7 will also apply.

#### **4. Records**

- 4.1 The Public Contracts Regulations require contracting authorities to maintain the following comprehensive records of procurement activities:
  - 4.1.1 contract details including value;
  - 4.1.2 selection decision;
  - 4.1.3 justification for use of the selected procedure;
  - 4.1.4 names of bidding organisations, both successful and unsuccessful;
  - 4.1.5 reasons for selection;
  - 4.1.6 reasons for abandoning a procedure.
- 4.2 The outcome of any competitive procurement process must be recorded in electronic format on YORtender. Information from YORtender will also be used for the tracking of procurement savings, sustainability benefits, and other data.
- 4.3 Commercial Procurement will also maintain the Contract Register which will record key details of all Contracts (including contract reference numbers) with an aggregate value of £5,000 or more or such other value as the Chief Finance Officer may agree from time to time.
- 4.4 Where a Contract has not been awarded using YORtender, Officers must ensure full details of that Contract are passed to the Chief Procurement Officer for inclusion in the Contract Register where the aggregate value of the Contract is £5,000 or more or such other value as the Chief Finance Officer may agree from time to time. Decisions as to why YORtender was not used must be recorded in writing and sent to Commercial Procurement.
- 4.5 Full records of all contract documentation, quotations, estimates, tenders and any other correspondence pertinent to the award or acceptance of a Contract must be kept by Commercial Procurement for the duration of the Contract and a minimum of six years after the Contract has been concluded or twelve years after the Contract has been concluded where it is executed under common seal as a deed.
- 4.6 It is the responsibility of Chief Officers to ensure that all Contracts are properly entered into, administered and controlled to safeguard the Council's interests, secure Best Value and minimise the risk of theft, fraud and corruption.