

# Perth & Kinross Council

## Roads Maintenance Partnership Investigation



Prepared for Perth & Kinross Council  
August 2015

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# Contents

**Introduction .....3**

    Background .....3

    Previous investigations .....3

**Audit scope and objectives .....6**

    Management action .....6

    Acknowledgements.....6

**Key findings.....7**

    Overall conclusion .....7

    Findings.....7

**Areas for improvement .....12**

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# Introduction

## Background

1. During 2013/14 Perth and Kinross Council received correspondence relating to a potential loss on the part of a contractor and included a contingent liability in its 2013/14 annual accounts. This correspondence related to the Roads Maintenance Partnership (RMP), which is a partnering agreement between Perth & Kinross Council and Tayside Contracts for delivery of the Council's roads maintenance service, and implied improper practices and improper relationships by employees of both organisations.
2. Part of Audit Scotland's duties as external auditors of Perth & Kinross Council is to consider concerns raised by members of the public about the Council. We received a number of pieces of correspondence in relation to the allegations made and meetings were held to explore specific concerns raised by the complainants including:
  - the allegation of alteration of quantities and values between initial measurements and final invoices
  - use of sub-contracting of work by Tayside Contracts
  - the inappropriate inclusion of a named contractor on the RMP's contractors listings
  - an issue about the extent to which approved contractors were complying with SEPA recycling requirements for dumping of road plainings at quarries.
3. Audit Scotland's role is primarily to ensure that public sector organisations in Scotland use public money properly, efficiently and effectively. We do this in a number of ways, including annual financial audits of every public body in Scotland, including Perth and Kinross Council. We use the correspondence we receive as useful intelligence to inform the audits we undertake. Our 2014/15 annual audit plan identified our intention to review the RMP's contract management arrangements. The findings from this work are detailed below and will be reported to Perth & Kinross Council Audit Committee and shared with the complainants.

## Previous investigations

4. We noted that the Council had instructed a number of investigations into the matters raised by the complainant. We summarise their findings below and drew on their work to inform our approach.

### Internal audit investigation June 2014

5. A Perth and Kinross Council internal audit review, which was instigated at the request of the service in June 2014, considered the RMP annual tender process, access to information regarding contractors' rate and awarding of specific work to contractors, following a complaint to the Council that one of the contractor's submissions had been shared with the other bidders. The review concluded that:
  - *the (Environment) Service had improved the control environment relating to access to information and the clarity of roles in awarding work to contractors*

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- *there was no evidence of deliberate and wilful leaking of information to the named contractor*
  - *there was no evidence of inappropriate relationships between staff and the named contractor*
  - *there was also no evidence that the whistle-blower was deliberately disadvantaged.*
6. In relation to the specific allegation of leaking of information to a named contractor, internal audit highlighted that *the named contractor had indeed changed his prices and, in the opinion of the Service, these changes were of an inconsistent pattern. The Service subsequently reviewed the schemes issued within the year and found that the named contractor would have been successful in being awarded the majority of works if the new pricing structure were to be accepted.* We noted that, at that stage, the Service stopped the process and did not accept any revised pricing structure for any contractors.

### **Tayside Contracts internal audit investigations February and October 2014**

7. On the basis of the same complaint, and because the complaint allegations included individuals' outwith the Council's employment, investigations were also undertaken by Tayside Contracts' internal auditors and the police. A meeting note dated May 2014 documents discussions held by Council officials with Tayside Contracts and Police Scotland. This meeting note indicated that the police were *to meet with the contractor (complainant) also to advise him of no criminality.*
8. Tayside Contracts internal auditors, Henderson Loggie, conducted two investigations covering the issues raised. The first, reported in February 2014, concluded that *there was no evidence of a contractor inappropriately using Tayside Contract's resources or having inappropriate access to Tayside Contract sites.* A further report issued in October 2014 concluded in relation to the RMP that:
- *the Roads Maintenance Service Partnering Agreement between Perth & Kinross Council and Tayside Contracts does not contain a clause preventing Tayside Contracts from sub-contracting out work awarded to it*
  - *the awarded work procedure came into operation at the end of June 2013 and this sets out the circumstances where Roads Maintenance Partnership work can be sub-contracted*
  - *a review of sub-contract work awarded since the new procedure became operational did not highlight any instances of non-compliance.*

### **External consultant investigation December 2014**

9. The Council's Chief Executive and the Executive Director (Environment) commissioned an external review of the process for awarding roads related contracts in terms of their adequacy, appropriateness and effectiveness. The report *A Review of the process for awarding roads related contracts* concluded in December 2014 that *the arrangements are robust and the process for awarding work is fair and equitable. Contracts are awarded fairly within a best value framework and the methodology applied provides contractors, on the tender list, with the opportunity to be awarded contracts on the basis of rates submitted by them. The arrangements are proportionate and if anything the Council and the Partnership have gone to great lengths to strengthen the arrangements and demonstrate they are fair and constitute Best Value. This is an ongoing process*

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*and the Partnership would benefit from some fine tuning, as outlined in this review, to enhance aspects of the arrangements further.*

### **Internal investigations April and June 2015**

10. The Chief Executive requested a review by the council's solicitors to determine whether the Roads Maintenance Framework Contract has been properly procured; call offs under the contract were following a legally compliant process, and senior officers had appropriate controls and quality assurance systems in place to ensure that awarded contracts were sufficiently robust. In April 2015 the legal department reported that their review did not identify any concerns over the integrity of the process.
11. The Executive Director and Depute Director (Environment) Service requested a further review of RMP annual tender contracts, focussing specifically on:
  - full analysis of work undertaken on a contract at Auld Bond Road, Perth
  - a random sample of other annual tender files from both north and south areas by contractor and supervisor for the years 13/14 and 14/15
  - procedures for claiming any overpayments back from contractors
  - procedure for any end of year payment when no final measure has yet been taken
  - industry standards in relation to measurement of jobs and tolerances including what other local authorities do
12. The *Roads Maintenance Partnership Review of Annual Tender Files* report was agreed with officers in June 2015 and raised concerns about the standard of documentation held on files (refer paragraphs 29 and 43).

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# Audit scope and objectives

13. The objective of this audit was to evaluate whether there was any evidence available to support the allegations raised with us. We obtained details of how the RMP operated including reviewing its minute of agreement, the partnership agreement and relevant committee papers. We focussed specifically on:
- evaluating the process used from initial measurement of the work through to final payment
  - evaluating the procedure by which sub-contracting is undertaken and assessing whether this process has been appropriately followed
  - establishing how contractors are assigned to contractor's lists for works and evaluating whether this procedure has been applied in respect of the named contractor.
14. This report includes details on findings from other internal investigations in relation to Tayside Contracts, however our review related solely of the processes and procedures operated by Perth & Kinross Council. We met with a number of officers and reviewed various documents during the review.

## Management action

15. The issues identified in preparing this report are only those which have come to our attention during the course of the review and are not necessarily, therefore, all the issues that may exist. Although we have reported a number of areas for improvement, we should highlight that it is the members and officers of the Council who are responsible for the management and governance of the organisation. We would stress, however, that an effective system of internal control is an essential part of the efficient management of any organisation.

## Acknowledgements

16. The contents of this report have been agreed with relevant officers in terms of factual accuracy. The assistance and co-operation received from officers during the course of our audit work is gratefully acknowledged.

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# Key findings

## Overall conclusion

17. The poor quality of files maintained by the Council in relation to the awarding of contracts under the RMP and the lack of an audit trail makes it difficult to detect any manipulation of quantities and values between initial measurements and final invoices. Whilst our testing found no evidence on files, to suggest that quantities and values are being manipulated, we are unable to provide any assurance that this has not occurred.
18. Our review did not uncover any evidence to support the other allegations received.
19. No specific action plan has been included in this report, however we strongly recommend that the areas for improvement highlighted at paragraphs 43 and 44 be implemented as a matter of priority.

## Findings

### Billing

20. Manipulation of quantities and values within contracts were alleged in the complaint.
21. To assess whether there was any substance to the allegations of manipulation of quantities and values we selected a sample of 21 job files covering both 2013/14 and 2014/15. Our review considered whether the controls operated by the Council were in line with RMP procedures and evaluated whether any risks identified had been adequately addressed.
22. Our audit testing found that files held were of a poor standard. In our sample one file could not be located and officers had difficulty in obtaining a number of others (providing details for different jobs initially which added to the confusion). The full process to allow a ready assessment of who had undertaken initial measures through to the final agreement of the invoices was not clearly documented in all the files received. The files sampled were a combination of hard copy documents and electronic documents/spreadsheets. Documentation processes between offices differ as a pilot was introduced in one office to address the concerns raised through the previous internal investigations. Officers have advised that the improved documentation processes have subsequently been rolled out to the other office.
23. The documentation on files does not provide a clear audit trail of the decisions taken or evidence that appropriate authorisations were obtained. Generally, quantities and costs appear to be in line with the documentation provided, but the lack of an audit trail makes it almost impossible to detect any manipulation of the contracts and whilst our testing found no evidence on files to suggest that quantities and values are being manipulated, we are unable to provide any assurance that this has not occurred.
24. After the RMP budget has been agreed each year, an assessment of the work to go out to competition is determined. This resulted in approximately £2.5 million of works being awarded under open competition in 2014/15. The RMP also develop a programme of work that will be awarded directly to Tayside Contracts throughout the year, to meet the assumed 75% level (*refer*

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paragraph 33 and 34 below). We were advised that the programme is continually updated by the senior management team, to allow for additional works or delays to jobs, however these discussions are not documented and therefore there is no audit trail supporting amendments to the annual programme of works.

25. Our sample covered seven files relating to Tayside Contracts and we were able to confirm that these were included within the agreed programmes. All works are required to be subject to an initial measure by RMP supervisors, which is also the first step in establishing the lowest priced contractor. The initial measures are required to be reviewed by an RMP superintendent before being entered in to a spreadsheet known as the master patch which contains all of the data from the tendering process. The master patch calculates the cost of the job by each of the approved contractors.
26. We noted that five of the seven contracts tested were contained in the Tayside Contracts work programme prior to the initial measure of the work to be undertaken. This partially mitigates the risk that work is awarded to Tayside Contracts to the detriment of individual contractors as these had been included as part of the 75% of work allocated in-house.
27. Other issues highlighted during our review included:
  - initial measures are not always held. Where these are on file it is not always clear who has undertaken the initial measurement and whether this has been agreed/authorised.
  - an *annual tender schemes* document was not held for 12 of the jobs sampled. This summarises the documentation held and includes details of the initial measure. For two jobs there were slight differences between the initial measure and annual tender scheme quantities with no explanation for the variation held on file.
  - the master patch and average price calculation for one job was £326 different from the estimated price noted.
  - for one job the value on the offer letter did not agree with the initial measure and the calculation of the price (via the master patch). The initial measure agreed to the master patch. There was no documentation to indicate why different amounts were included on the offer letter.
  - one job was awarded to the third cheapest contractor but there were no rejection letters on file from the two lower priced contractors. Officers noted that verbal confirmation was obtained from both contractors and a rejection letter for another job covering the same period was held for one which showed they were unavailable at that time.
  - there was no offer letter on file for three of the jobs and another offer letter was unsigned.
  - the files held by the Council for jobs awarded to Tayside Contracts had very little information. Officers highlighted that this is due to the operational decision to hold the information only once to avoid duplication. However, it is not clear from either the files reviewed or discussions with officers what or where information should be held.
  - it was not clear from the files reviewed whether final measures had been agreed and in some files no final measures could be found other than on details within the invoice.
  - initial measures and invoice amounts varied significantly in some files. The variances between estimates and actual invoiced are not always clearly documented or explained.



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- the *RMP scheme project* (quality monitoring) sheets appear to be completed on only a few files. From the sheets provided it is unclear what checks are undertaken on the quantities, quality and pricing of the jobs as well as recycling amounts.
  - two invoices stating "as per your order" but not detailing the materials and prices to arrive at the final cost were passed for payment. One of these, however, also included details of additional works which had been undertaken.
  - invoices were all appropriately authorised for payment prior to being paid. However it is not clearly documented what checks officers had undertaken to confirm changes from the initial measure for quantities (on most occasions) or rates (on one occasion) and whether these were appropriate/agreed.
28. We noted that, in some of the files, the *project quality monitoring sheet* recorded estimated and actual recycled amounts. Most of the forms, however, were incomplete or not available and it was not clear what if anything is done to confirm the amounts.
29. The recent internal investigation in June 2015 by Council officers on the quality of files confirmed our findings on the standard of file documentation and highlighted significant issues, in particular:
- no clear/common procedure in place for compiling/recording details of the schedule of work being undertaken
  - lack of re-measurement details which should be signed and dated by both the supervisor and contractor
  - where there are differences from the original estimate and size there were no file notes to advise course of action agreed in respect of over-/underpayments
  - not all files had signed or dated CDM Pre Construction information or H&S Plans in place
  - an independent check of supervisor measurement books confirmed that not all re-measures are recorded
  - no procedure for any end of year payments when no final measure has been undertaken
  - no clear evidence of a procedure being followed for claiming back over-payments from contractors or of informing them of overpayments. The contractors submit an interim invoice usually based on the original estimate and then submit a final invoice for the actual work undertaken.
30. A number of recommendations have been agreed as a result of the internal investigation (*refer paragraph 43*) and further internal reviews will be carried out to confirm the required actions have been taken.

## Sub-contracting

31. Two occasions where sub-contracting had occurred were identified to the Council by the complainant alleging this was not permissible under the annual tender agreement.
32. We reviewed the Minute of Agreement between the constituent councils of Tayside Contracts Joint Committee and the RMP between Perth & Kinross Council and Tayside Contracts and found no clauses that stated:

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- Tayside Contracts are prevented from sub-contracting
  - 75% of works under a certain threshold are awarded to Tayside Contracts.
33. The Council investigated the complaint and, as a result, approval of any sub-contracting by senior officers within the Council was introduced to tighten controls. The revised processes, as set out in the *Awarded Work Procedure*, were agreed by the RMP Executive Board in June 2013 and ratified by the Enterprise & Infrastructure Committee in January 2015. Per the procedure at appendix 2 of the committee paper: *whilst it is accepted within the Roads Maintenance Partnership that the 75% of works awarded on average rates should be completed using in-house council (Tayside Contracts) employees and sub-contacting should not be permitted, there are, for various sound operational reasons, occasions when this is not always possible*. The report also highlighted that the 75% applied to work awarded under £150,000.
34. The Roads & Transport Committee, in 2002, had approved a change to the threshold for awarding works which restrict the competitive element of all jobs, under £100,000, going out to competition to 25%. We have been unable to determine, however, where or when this threshold was changed to £150,000 although the practice of awarding 75% of work under £150,000 to Tayside Contracts is clearly operated by the Council. The report to the Enterprise & Infrastructure Committee in January 2015 highlighting that 24.59% of RMP work went out to competition in 2013/14 (an estimated 25.89% in 2014/15).
35. Subcontracting for specialised minor construction works and delays in carriageway and footway resurfacing is permitted per the updated procedure. We note that Tayside Contracts internal auditors (Henderson Loggie) reviewed each sub-contractor listed under depots where work was awarded to Tayside Contracts under the RMP. This considered the breakdown and value of work performed focussing specifically on sub-contracting since the revised process became operational at the end of June 2013. Internal audit reviewed all sub-contracted works above £2,000 and found in each instance that the work fell within the two specific work categories listed within the Awarded Work Procedure.
36. The January 2015 Enterprise & Infrastructure Committee report clearly notes the occasions and processes to be adopted when sub-contracting is required. This provides a more transparent platform from which the RMP can operate.
37. We found no evidence to support the assertion that work is being inappropriately sub-contracted.

## Contractors

38. The inclusion of a named contractor on the 2014 RMP's contractors listings was queried by the complainant.
39. Audit testing confirmed that the Tayside Procurement Consortium (TPC) manages the listing of contractors on behalf of Angus, Dundee City and Perth & Kinross Councils. An open OJEU (Official Journal of the European Union) procedure is used which means that the Invitation to Tender is sent to all suppliers that expressed an interest in response to the contract notice.
40. As part of the tender process, contractors' financial statements are assessed and a view taken on whether the business is financially strong, weak or reasonable. This assessment is undertaken for

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the councils by TPC following which the individual councils are advised which suppliers are on the approved lists. Perth & Kinross Council received legal advice from Dundee City Council (where TPC is based) and, due to having received a complaint in relation to the inclusion of a named contractor, the Council also obtained its own legal advice on the named contractor in the complaint. Both sources of legal advice confirm there is no legal reason for that contractor to be excluded from the listing.

41. There is therefore no evidence to support the assertion that the named contractor was inappropriately included in the contractors' listings.

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# Areas for improvement

42. As a matter of priority the Council should enhance its file documentation to provide a clear audit trail to support the decisions taken by the RMP and ensure the appropriate processes are being followed. This would provide assurance that jobs are not being fraudulently/ erroneously manipulated.
43. As the Council has already committed to implementing the recommendations below as part of the June 2015 internal review of the quality of files, we are not raising further recommendations in this report but would strongly recommend the agreed actions are implemented with immediate effect:
- all files should follow the same uniformity and consistency of documentation
  - all deviations from original estimates and measurement should have a detailed explanation and any remeasurements should be signed and dated by both a Council supervisor and the contractor
  - there should be a check list at the front of the file with details of all documentation expected to be in the file along with boxes for the superintendent to sign as complete and a note box for any other additional comments
  - files should mirror any electronic files kept
  - procedures for claiming back overpayments from contractors to be made clearer
  - procedure for end of year payments when no final measure yet done to be introduced
  - suggest RMP management team visit South Lanarkshire/Ayrshire Council to look at their electronic files and processes and procedures with a view to moving away from paper files
  - suggest measurement training be introduced, given the variations in approaches
  - letters to be issued where contractors have refused work when selected from the annual tender process.
44. In addition, the Council should:
- clearly document changes relating to Tayside Contracts work programme during the year and the rationale for these decisions (*see paragraph 24*). This would provide further assurance that the contracts are awarded equitably
  - clearly document the amounts recycled and record actions taken to confirm the values to ensure it complies with SEPA recycling requirements for dumping of road plainings at quarries (*see paragraph 28*)
  - formally documents the threshold in place to restrict the competitive element of all works, under a certain threshold, going out to competition. Current custom and practice dictates the thresholds are 25% of all contracts under £150,000 (*see paragraph 34*).