

Audit and Assurance Committee

Date: 11 October 2016

Item: EY Review of Internal Audit of Garden Bridge Procurements

This paper will be considered in public

1 Summary

- 1.1 The purpose of this paper is to present to the Audit and Assurance Committee the report setting out the findings from Ernst and Young's (EY's) review of the audit carried out by TfL Internal Audit of the procurements of design and development services in relation to the Garden Bridge.

2 Recommendation

- 2.1 The Committee is asked to note the paper.

3 Background

- 3.1 During the first half of 2013, TfL ran two tender exercises in respect of a proposed footbridge from Temple to South Bank, commonly referred to as the Garden Bridge. The first of these was for an initial design contract, which was awarded in March 2013 to Thomas Heatherwick Studio for a final fee of £52,425. The second contract was to develop the technical design of the bridge to enable a planning application to be submitted. This was awarded to Arup in July 2013 for a final fee of £8.4m.
- 3.2 In June 2015, in response to questions over the procurement of design services for the Garden Bridge, the then Commissioner wrote to Caroline Pidgeon, MBE AM, Leader of the London Assembly Liberal Democrat Group, confirming that TfL Internal Audit would carry out a review of the design and development procurements, and that the results would be published.
- 3.3 A normal audit process was followed, and a draft audit memorandum was shared with management for comment in late July 2016. Audit memorandums are typically used where audit work is being carried out in response to a management request. They have a less structured format than standard internal audit reports.
- 3.4 The memorandum was issued on 15 September 2015 (see Appendix 2). It highlighted a number of areas where the procurement process followed did not comply with TfL policy and procedures. The findings from the audit were a basis for questioning of the then Managing Director, Planning when he was questioned by the London Assembly's Oversight Committee a few days later.

- 3.5 The Director of Internal Audit attended the Oversight Committee on 22 October 2015 and answered questions concerning the audit process followed, the independence of Internal Audit, and the changes that had been made to the report between the first draft and the issued report.
- 3.6 On 17 December 2015, the then Mayor of London, the Commissioner of TfL and the Managing Director, Planning attended the Oversight Committee to answer questions about the project.
- 3.7 On 25 February 2016, the then Chair of the Audit and Assurance Committee also attended the Oversight Committee to answer questions about the audit.
- 3.8 At its meeting on 8 March 2016, the Audit and Assurance Committee requested that EY carry out a review of the internal audit process.
- 3.9 EY's report setting out the findings from its review is attached as Appendix 1. The report supports the overall findings of TfL Internal Audit as set out in its memorandum dated 15 September 2015. However, the report also highlights some opportunities to improve the documentation of the audit working papers supporting the audit findings, and notes some additional points that could have been included in Internal Audit's report.
- 3.10 The recommendations made by EY together with TfL's response are summarised as follows:
- *Reminders to the Internal Audit Team of a number of points relating to the documentation of audit findings within the audit file.* Internal Audit acknowledges the importance of an appropriate level of documentation of findings, and this is already incorporated into its methodologies. Internal Audit staff will be reminded of the specific points raised by EY.
 - *Additional management action to enhance the monitoring of procurements to ensure compliance with policy and procedures, particularly on high profile procurements.* TfL is currently undertaking a review of its commercial processes and this recommendation will be implemented as part of that review.
 - *Reminders to audit managers regarding review of audit working papers prior to issue of the draft report.* Internal Audit's methodologies already require managers to carry out sufficient review of audit working papers to satisfy themselves that the audit has been properly conducted and appropriate conclusions drawn. Audit managers will be reminded of the specific points noted by EY.
 - *Suggested enhancements to audit terms of reference/engagement letters.* The points mentioned by EY are included in engagement letters as appropriate to the particular circumstances of each review.
- 3.11 EY's report notes some additional issues that could have been raised in the Internal Audit memorandum. TfL accepts these points.
- 3.12 EY's report also notes that it would have been better not to have included a statement concerning value for money within the memorandum, given the scope of the work performed. TfL accepts this observation.

3.13 On 22 September 2016, the Mayor announced that Dame Margaret Hodge MP, former chair of the Public Accounts Committee, will conduct a review into the Garden Bridge project. The review will look in detail at whether value for money has been achieved from the taxpayers' contribution to the project, and investigate the work of TfL, the GLA, and other relevant authorities around the Garden Bridge going back to when the project was first proposed.

List of appendices to this report:

Appendix 1 – EY Report entitled Garden Bridge Review dated September 2016

Appendix 2 – Internal Audit Memorandum – final version dated 15 September 2015

List of Background Papers:

None

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Transport for London Garden Bridge Review

Final Report

September 2016

Circulation
To:

Members of the TfL Audit and Assurance Committee
Ian Nunn, TfL Chief Finance Officer
Howard Carter, TfL General Counsel
Clive Walker, TfL Director of Internal Audit



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EXECUTIVE SUMMARY

Coverage of Work	TfL Internal Audit Garden Bridge Review 2015
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Fieldwork Date	May 2016
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Background and Scope

As explained in our ISA260 report we have extended our procedures relating to procurement to enable our conclusions on VFM. As discussed at the TfL Audit and Assurance Committee we agreed to perform an independent review following issues raised over the robustness of the TfL Internal Audit review of the Garden Bridge design and engineering support procurements. The review was conducted cognisant of the external coverage and correspondence received from third parties since completion of the audit. This report summarises the findings of the review examining the work undertaken by TfL Internal Audit to support the conclusions reported in the audit memorandum issued 15th September 2015. It covers the following elements of the Internal Audit delivery: Planning, Fieldwork, Reporting, Follow Up and Quality. A detailed terms of reference is at Appendix 1.

Given some of the findings we also reperformed some elements of the work to ensure the conclusions were supportable.

By way of context both the design and engineering procurements were run a number of years ago (2013) and many changes to senior management have occurred since then. In addition, the Garden Bridge Trust has since been created (2014) to take the project forward, including managing the procurement of the contractor, Bouygues, to construct the bridge, in May 2015.

Result

We support the overall findings of TfL internal audit which calls into question the level of transparency, openness and fairness of the procurement process, particularly at the tender evaluation phase of the procurements.

Our review of the audit work undertaken by the TfL Internal Audit Team regarding the Garden Bridge design and engineering support procurements has concluded that whilst there is working paper evidence to support the majority of conclusions reached and issues raised, there were potentially further issues, in both procurements, that have not been highlighted, which further re-inforce the importance of establishing a procurement strategy for major projects, and additional examples of non-compliance with TfL policies and procedures. An earlier discussion of the factual accuracy of initial findings with management prior to the issue of the draft report could have prevented the degree of change between the initial and final draft of the reports – for example the OJEU matter.

All of the management actions arising from the 2015 review should go a significant way to address the control issues raised. In addition, we would suggest that TfL procurement review processes be reconsidered to ensure appropriate challenge is made, particularly in relation to key procurements or politically sensitive ones.

The two main areas for improvement arising from our review relate to the documentation and evidencing of the audit fieldwork completed and hence the ability to fully demonstrate the robustness of the audit review undertaken; and the completion of detailed working paper review prior to issue of a draft report in order that it can be confirmed that all potential issues have been followed through and that no issues have been missed. Some more minor notes for enhancement of the audit planning process have also been noted.

A summary of key findings, by area, is outlined below, with further details of the areas covered in the Observations and Recommendations table on the following pages.

In summary we found that:

- The final report's conclusion on OJEU was correct, as the engineering procurement was undertaken under a properly constructed OJEU framework.
- The final report contained a large number of recommendations, and the only recommendation that we would add would be for TfL to consider what additional review processes it might put in place to ensure key procurements follow the correct process, particularly on high profile projects.
- We disagreed with the report conclusion on two of the risks areas where it was assessed in the Final report there were no issues arising. Whilst in regards to Contract award and debriefing the issue had been highlighted under another section, there were issues regarding developing and approving the Invitation to Tender which were not included in the report.
- A few areas of investigation were not followed through as robustly as we might have expected, and a number of additional findings could have been added to the report.
- The completion of the audit file documentation and the timeliness/thoroughness of the review process could have been better.

EXECUTIVE SUMMARY

Summary by Scope Area	
Process	Overall Comments and Explanation
Fieldwork	<p>A structured approach to fieldwork was undertaken utilising a work programme developed to cover the six risk areas covered in the Audit Engagement letter. Interviews were held with all of the key individuals involved in the two tender processes and large amounts of supporting documentation (emails, tender documents etc.) had been obtained.</p> <p>The working papers supporting the conclusions reached was incomplete and/or could have been improved in some areas. In particular our review noted the following:</p> <ul style="list-style-type: none"> • No summary overview document of the expected processes to be followed as a starting point for evaluation of the actual procedures followed, and no context or background for the procurement undertaken. • Across a good number of work steps it was not possible to see that all the tests/actions defined had been completed as there was no narrative in response to each test. • There was insufficient detailed analysis within the working papers to demonstrate what analysis the Auditor had completed with any of the information received (e.g. tender evaluation documents) or how conclusions had been reached e.g. compliance with business policy, without the reviewer having to re-perform the test/assessment themselves. <p>There were a number of areas where the audit evidence should have prompted further review or challenge. It is not clear from the working papers or in the conclusions reached if these areas had been highlighted and discussed further (see Observation 1). Having re-performed the work regarding the compliance with OJEU, we conclude that the procurement approach adopted for each contract was correct. We therefore, concur with the internal audit final findings in this regard. We also agree that the procurement could have been better run in a number of areas, and better retention of documents noting decisions made and assessments of the process carried out.</p>
Reporting	<p>Our review found that the majority of issues included in the initial report were reflected in the final report, however re-writing/re-ordering of the report in a more succinct way for some aspects removed some of the context which would have been helpful to have been retained. In addition, our review notes that there were issues identified in 4 out of the 6 risk areas reviewed compared to 2 out of 6 stated in the TfL Final report. Whilst in regards to Contract award and debriefing the issue had been highlighted under another section, there were issues regarding developing and approving the Invitation to Tender which were not included in the report.</p> <p>There were a number of observations included in the Executive Summary and Recommendations sections which had not been pulled through to the more detailed Findings section, for example the lack of procurement strategy and process non-compliance issues raised by the Commercial team. There were also a number of observations, such as tender document design errors for the Design contract and tender evaluation criteria, which were not included in the report and for completeness should have been reflected.</p> <p>Reference to "Value for Money" was specifically made in the report, although this was not part of the defined audit objective and scope, and no specific work had been undertaken to evaluate this as part of the review. A view on the level of "transparency, openness and fairness", which was a specific part of the audit objective was not so explicitly made (see Observation 2). Given the scope of the work performed, it would have been better if the statement had not been included.</p>
Quality	<p>There is a lack of evidence to confirm the extent of detailed review of the work undertaken. The Audit Managers have confirmed that a detailed working paper review had not been completed prior to the issue of the draft report, with reliance placed on the ongoing discussions with the Auditor undertaking the review.</p> <p>This may have resulted in additional issues regarding the procurement activities not being highlighted. In addition, an earlier discussion of the factual accuracy of initial findings with management prior to the issue of the draft report could have prevented the degree of change between the initial and final draft of the reports, as noted above (see Observation 3).</p>
Planning	<p>A defined process is in place for the planning and scoping of TfL internal audit reviews, which was followed for the audit of the procurement of design and development services for the Temple to South Bank Footbridge Project. Some enhancements to the drafting of future Terms of Reference / Engagement letter have been noted which would re-inforce further the specific audit scope and more clearly articulate the level of assurance being provided (see Observation 4). This issue is relatively minor.</p>
Follow Up	<p>Action plans to address the issues raised in the September 2015 report were established and regular review and update with management has been occurring. At the time of this review six of the 10 actions were reported to have been completed, with the remainder due for completion by the end of June 2016. A formal follow up of the audit is also planned (see Observation 5).</p>

OBSERVATIONS & RECOMMENDATIONS

Observations	Suggested Actions For Improvement
<p>1. Fieldwork</p> <p>A work programme template for the audit was established detailing the risks and work steps/tests defined to address each of the six key risk areas outlined in the review Terms of Reference / Engagement Letter:</p> <ul style="list-style-type: none"> · Procurement management processes and compliance with UK & EU guidance · Selection of pre-qualification of bidders · The process for developing and approving the Invitation to Tender, contract and associated documents · Evaluation process for Invitation to Tender and management of bid clarifications · Contract award and debriefing · Arrangements for post contract award management <p>A separate work programme template was utilised for each of the two procurements reviewed. The work programme was completed by the Auditor including references to relevant documentation evidence (TfL policy, emails etc.). The final documents and audit evidence were filed (soft copy) in a designated folder within the TfL Auto Audit application utilised by the department to manage their audit activity.</p> <p>Our review of the audit work programmes and supporting documentation noted the following where it would have been beneficial to have had additional detail provided and captured:</p> <ul style="list-style-type: none"> · An overview of the TfL procurement process, in particular the tender process which was the focus of the review; · Background and context of the procurement exercise; and · A specific assessment of each procurement against the TfL process, highlighting the steps where non-conformance with the process was highlighted. <p>· Audit programme workstep / test completion: Throughout the evaluations of the two procurements, the results and supporting evidence gathered do not correspond directly to the test step against which they are captured and/or the actions required have not always been completed or fully completed. Whilst in some instances it is deemed that the test is not applicable and the reason captured, this has not been done in all cases. It is possible that this did not occur in this review as the auditor had left before the audit was finalised.</p> <p>A number of tests/worksteps require comparison to/determining the extent of compliance with the relevant business policy (e.g. Step 3 regarding compliance with EU and TfL procurement policies). Results just note "<i>The process followed is in line with TfL and EU approach</i>", however no working paper or test schedule has been completed that shows the key elements of the TfL and EU policies and how the procurements have complied with it or if elements are not applicable and the rationale. Therefore, without re-performing the audit work it has not been possible to conclude on the accuracy of this and similar statements and hence the overall conclusions made.</p> <p>Similarly, there are worksteps which require a check to confirm specific documents, such as the Form of Tender, are included in the ITT. Whilst this was confirmed as included in the tender documents issued, it was not clear from the working papers that a check has been made to confirm that each of the bidders completed the documentation as part of their submission.</p>	<p>The TfL Internal Audit team should be reminded of the following:</p> <ul style="list-style-type: none"> · Each audit file should stand alone and the work performed and documented support the outcomes reached. · Gain an overview of the area being audited to ensure context is understood and any internal or external factors which may impact it - don't assume you know a process. It and/or the person undertaking it may have changed since the last time the review was completed. · Ensuring that all work steps/tests are completed and supported by documentation, detailed test schedules and walkthrough testing as appropriate, in order that, for example, compliance with policies and procedures can be readily seen by the reviewer without the need to re-perform the test/evaluation themselves. · Where additional information is obtained which results in a change to initial conclusions, working papers should be updated to reflect the additional information and/or a file note added to capture the additional details. · Follow lines of enquiry through to resolution and document results. · Consider Use of benchmarking to evaluate /critic process e.g. is timescale, cost, approach normal for the type of project? Ensure that high-tended risks are considered with appropriate professional scepticism.

OBSERVATIONS & RECOMMENDATIONS

Observations	Suggested Actions For Improvement
<p>1. Fieldwork (Continued)</p> <ul style="list-style-type: none">Audit programme update: There were a number of audit observations, most significantly regarding the legal advice on OJEU requirements, where additional audit evidence was identified in the course of the report review process confirming that there was no issue. Changes were made to the audit report to reflect this, and a full trail of changes to the report retained, however the working papers and, in particular the audit work programme, have not been updated to reflect this. Given the importance of this issue we re-performed this work and are satisfied that the final report with regards to OJEU requirements is correct. The Bridge Design Consultancy Services tender was below the OJEU threshold, and the engineering tender was carried out using a properly constructed OJEU framework.Level of questioning and challenge: The work programme and associated documentation do not clearly show the extent to which any independent review or challenge has been undertaken in all areas. For example, regarding the Mini Competition Task 112 Engineering and Project Management Services ITT assessments, the ITT document clearly states that no bidder scoring less than 50 out of the 70 marks available on the technical capability would be appointed. The results from the ITT assessment showed, following the initial assessment, that none of the bidders achieved the requisite minimum 50 marks - Arup was closest with 49.25. There was no evidence in the working papers that this observation had been made, or followed up. The final ratings show only Arup met the hurdle rate with 51.9. Given the relative scoring of each bidder we believe that the issues should have been followed through into the findings of the report in more detail.	

OBSERVATIONS & RECOMMENDATIONS

Observations	Suggested Actions For Improvement
<p>2. Reporting</p> <p>Review of the Final report (dated 15/09/2015) and the Draft report (dated 22/07/15) has highlighted a number of differences between the two reports. Whilst in the main this is due to points being reported in a more succinct manner, some of the important context has, as a result been lost. Our review has highlighted some additional aspects which have not been reflected in the Final report and which impact on the overall assessment of the TfL audit. Our review notes that there were issues identified in 4 out of the 6 risk areas reviewed compared to 2 out of 6 as stated in the TfL Final report.</p> <p>The report captures the majority of the issues identified as a result of the audit and makes recommendations to address the deficiencies noted, however there is no finding or recommendation relating to monitoring controls in place that allow management to confirm that due process has been followed and complied with for tender activity, and what additional checks will be put in place going forward e.g. post award reviews to highlight potential process issues that needed to be addressed as well as aspects which worked well.</p> <p>A summary of our evaluation against each Risk Area reviewed is outlined below:</p> <p>Risk Area 1: Procurement management processes and compliance with UK and EU guidance</p> <p>We agree with the overall assessment of this area, that there were issues regarding compliance with TfL policy regarding tendering. In addition the following aspects were also noted:</p> <ul style="list-style-type: none"> • The Executive Summary highlights that a procurement strategy for the Garden Bridge had not been established, and states that the mitigating factor for this was that the role of TfL at the start of the project was not clear. However there is no mention of this issue in the detailed Findings section of the report. • The report does not specifically mention the time and external pressures being exerted on TfL to get the project underway. This is highlighted a number of times through the working papers. • The decision to undertake the procurement for the design and engineering support separately allowed for a quicker process, and due to the expected low value of the design contract, did not require the design procurement to go through an OJEU process. It is unclear from the audit documentation who made the final decision on approach, and based on the audit evidence reviewed it would appear to be the Planning team, however this is not explicitly stated in the working papers or report. • The report includes a recommendation relating to the lack of action taken following concerns raised by TfL Commercial staff around the issues highlighted regarding communications with bidders and tender evaluations, however this point was not highlighted in the Executive Summary or the detailed Findings section of the report. Whilst this highlights that non-conformance with policies was known, it is also a positive point that TfL staff are prepared to call these things out, even when it relates to more senior management. <p>Risk Area 2: Selection of pre-qualification of bidders</p> <p>We agree with the assessment that there were no issues with selection of bidders to be invited to tender in either procurement on the basis of accepting the approach taken to the design procurement, in the absence of a procurement strategy.</p>	<p>The following additional management action should be considered:</p> <ul style="list-style-type: none"> • Determine the management controls in place that monitor compliance with procurement policy and procedures and where necessary highlight improvements that need to be made e.g. implementation of post contract award reviews. This could be part of the process to ensure that all tender related documentation has been collated and filed in line with policy requirements. • Introduction of additional review and approval procedures for high profile procurements, particularly those considered to be urgent or sensitive.

OBSERVATIONS & RECOMMENDATIONS

Observations	Suggested Actions For Improvement
<p>2. Reporting (Continued)</p> <p>Risk Area 3: The process for developing and approving the Invitation to Tender, contract and associated documents</p> <p>We disagree with the assessment that there were no issues with regard to the Invitation to Tender (ITT) and associated documents for the Bridge Design Consultancy Services. Our review noted the following:</p> <ul style="list-style-type: none"> Once the three bidders had submitted their tender documentation it was noted that they had not only provided their day rates (as requested) but also a view on overall cost, as a template requesting this information had not been removed from the ITT documents in error. This information was not used as part of the commercial evaluation process. For the Engineering support ITT, whilst all relevant departments input to this document, there was no evidence of final review and approval of the document prior to issue. The tender specification and requirements for the design consultancy procurements were prepared by TfL Planning only and there was no evidence that these had been subject to any review prior to them being included within the formal tender template for issue by Purchasing. The tender document and requirements make no mention of a "garden bridge" concept, inclusion of which may have allowed the bidders to put forward some different and potentially more relevant examples of their work. All internal communications to this point have been in relation to a "garden bridge", however this was not mentioned in the tender. <p>We therefore do concur that this design phase of tendering was not as transparent and fair as it should have been.</p> <p>Risk Area 4: Evaluation process for Invitation to Tender and management of bid clarifications</p> <p>We agree with the assessment that there were issues with this phase of the procurement. Our review also noted the following:</p> <p>Design Services Tender</p> <ul style="list-style-type: none"> The Findings section highlights that an individual within Planning undertook both the commercial and technical evaluations. The report also highlights that an individual within Planning contacted Heatherwick directly to clarify a point on their rates informally, however it was not made clear that this was the same individual in both cases. What is also not mentioned in the report is that the same individual was also involved in the writing of the specification. The documentation to support the commercial evaluation states that the pricing was similar across all three bids and hence given the same scores. Our review of the tender evaluation documentation summary shows that this is not strictly true. This should have given some variances across the bidder ratings, resulting in a different overall commercial outcome. The day rates assessment had been limited to "key people" only and did not consider the rates of all three grades requested. As the daily rates of the "key people" were on a par with each other, this resulted in the same scores being given. This is not in line with the approach outlined in the ITT. Whilst the Final report highlighted this point, it did not explicitly state that this may have benefited the eventual winner of the design phase. In addition to some of the documentation evaluating the day rates not being available, the criteria used to complete the technical evaluation was very high level (relevant design expertise, relevant experience and understanding the brief). It would be expected that there would be more specific criteria under each of these headings against which the tenders would be assessed in order to aid the evaluation. This point was highlighted in the working papers but not pulled through to the report. In mitigation of this point, it must be remembered that this procurement was for a small value in total, and technically need not have been tendered at all. 	

OBSERVATIONS & RECOMMENDATIONS

Observations	Suggested Actions For Improvement
<p>2. Reporting (Continued)</p> <p>Task 112 Temple Bridge</p> <ul style="list-style-type: none"> In addition to the points already reported, as noted above, the evaluation process would have benefited from capturing the more specific detailed criteria against which the tenders were being assessed. There is also a challenge as to the extent to which Arup had an advantage over the other bidders from having a more technical understanding of the proposed bridge. Their tender document does not hide the fact that they have had involvement from early on in the Heatherwick design process, however it is unclear due to the lack of detailed assessment documentation the extent to which this had any major impact on their scoring. The section conclusion makes a statement regarding <i>"not finding any evidence that would suggest the final recommendations did not provide value for money from the winning bidders"</i>. This was not part of the defined audit objective and scope, and no specific work had been undertaken to evaluate this as part of the review. A view on the level of "transparency, openness and fairness", which was a specific part of the audit objective was not so explicitly made. Given the scope of the work performed, it would have been better if the statement had not been included. <p>Risk Area 5: Contract award and debriefing</p> <p>We disagree that no issues were identified regarding contract award and debriefing on both procurements, as noted in the report summary.</p> <ul style="list-style-type: none"> The audit report highlights that the successful bidder for the Design Services contract (Heatherwick) had been contacted informally by TfL Planning (this is included with Risk Area 1 only). However the observation does not highlight that additionally all the outstanding queries on contract T&C's had not been resolved and there remained ongoing concerns raised internally on the assessment of the commercial element of the tender by the Commercial team. We agree no issues were identified relating to the Task 112 Temple Bridge contract award. <p>Risk Area 6: Arrangements for post contract award management</p> <p>We agree with the conclusion of no issues identified and no additional comments to raise.</p>	

OBSERVATIONS & RECOMMENDATIONS

Observations	Suggested Actions For Improvement
<p>3. Quality</p> <p>Our review has highlighted that a detailed working paper review has not been completed for this audit prior to issue of the draft report. The audit was undertaken by an experienced member of the TfL Internal Audit team (who has since left the business). It has been asserted by the Audit Manager and Audit Senior Manager that regular updates were held during the course of the fieldwork. This is supported by evidence of meetings scheduled in diaries. Review of working papers also shows that for many of the key audit meetings, these were attended by the TfL Audit Manager and Audit Senior Manager as well as the Auditor.</p> <p>The review and challenge of the draft report by the Audit Manager, Senior Audit Manager and Director of Internal Audit prior to issue is evidenced by retention of the different versions of the draft report, with changes highlighted.</p>	<p>Audit Managers to be reminded that detailed review of working paper files need to be completed prior to issue of the draft report in order to confirm that no potential issues have been omitted from the report.</p> <p>Where minor control enhancements have been highlighted but have not been deemed significant enough for the report, but have been discussed with management as part of the end of fieldwork closing meeting, this should be annotated on the working papers/issue summary e.g. discussed with management, not for report.</p> <p>Where there are changes between the issued draft report and final reports a file note should be added to capture the rationale and additional audit evidence obtained where appropriate.</p>
<p>4. Planning</p> <p>In line with the TfL Internal Audit methodology a Terms of Reference/Engagement letter was prepared which outlines the review scope and objectives, the review approach, the means by which the audit results would be communicated, the timetable for the work and the team who would be undertaking the review.</p> <p>The final document was sent to Richard De Cani (MD of Planning), Howard Carter (General Counsel) and Sir Peter Hendy (Commissioner) on the 16th June 2015, at the start of the audit fieldwork.</p> <p>Whilst it was no doubt clear to the TfL management who were subject to the review and/or receiving the resulting Internal Audit report which activities the scope of work related to, given that the report was likely to be circulated more broadly, the following observations are noted:</p> <ul style="list-style-type: none"> • Audit Scope: The audit scope could have provided more detail in order to ensure the end user of the report could be in no doubt on the detailed audit scope, objectives and level of assurance being provided. For example, referencing the two procurements to be covered (Bridge Design Consultancy Services TfL/90711 and Mini Competition Task 112 Engineering and Project Management Services); including the specific processes/sub-processes being covered under the six key risk areas; and inclusion of details on scope exclusions or limitations. • Audit Approach: The planned approach to undertaking the audit was described as being completed "<i>through a combination of desktop review of documentation and interviews with key personnel involved in the procurement exercise</i>". This implies a much lighter touch / less in depth review than was actually completed. 	<p>Audit Terms of Reference / Engagement Letters could be further enhanced by the following, ensuring that the end user of the audit report is aware of the specific scope and any limitations on the level of assurance provided in the particular review:</p> <ul style="list-style-type: none"> • Including more specific details regarding the focus of the review e.g. specific contracts, procurements; • Including scope exclusions and limitations; and • Ensuring the audit approach covers all the means by which the team may undertake their assessment to complete the audit review.

OBSERVATIONS & RECOMMENDATIONS

Observations	Suggested Actions For Improvement
<p>5. Follow Up</p> <p>Following finalisation of the report, management actions for each of the recommendations were agreed and an action plan established. Updates from management on progress to address the issues raised and implement the agreed actions have been received circa every four weeks, the latest at the time of this review being 29th April 2016. Six of the ten actions have been reported as completed, the remainder were in progress and due to be completed by the end of June 2016.</p> <p>A formal follow up of the audit is planned, and in addition audits are scheduled of commercial management in Group Planning, and of commercial record keeping generally, in the 2016/17 Audit Plan which will also pick up on a number of the actions.</p>	

1. REVIEW SCOPE AND OBJECTIVES

We will perform a review of the Internal Audit processes followed on the recent review of the procurement processes adopted on the Garden Bridge project.

This review will assess the processes followed by the Internal Audit team in conducting the review on the procurement process with specific regard to the following areas:

- Planning
- Fieldwork
- Reporting
- Follow up
- Quality

2. APPROACH

Our approach will comprise the following:

1. Interviews with approximately 10 key stakeholders including members of the IA team who performed the review to ascertain the processes they followed and the judgements used in reaching their conclusion as reported in the final audit report as well as relevant members from the business that were involved in the audit review undertaken.
2. Document and working paper review of the procurement process review to determine the effectiveness of the process followed. This will include a detailed review of the working papers for this review, covering their planning and scoping through to fieldwork and reporting.

3. END OF REVIEW FEEDBACK AND DELIVERABLE

The main deliverable from this review will be a written report, which we will discuss and agree with you prior to issuing in final. The report will contain sufficient detail to support the conclusions reached and recommendations made to enhance IA's independence and effectiveness.

Should you require we will personally brief the Chair of the Audit and Risk Committee, on the key findings and recommendations ahead of the Audit and Risk Committee meeting.

To: Richard De Cani, Managing Director of Planning

Cc: Mike Brown, Interim Commissioner
Howard Carter, General Counsel
Steve Allen, Managing Director Finance
Andrew Quincey, Director Commercial
Ian Nunn, Chief Finance Officer

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Audit of the procurement of design and development services for the Temple to South Bank Footbridge Project

Executive Summary

The audit did not find any evidence that would suggest that the final recommendations did not provide value for money from the winning bidders.

The audit identified no issues in either procurement with regard to:

- the selection of bidders;
- the development of the tender and associated contract documentation;
- the procedure used when awarding the contracts and providing the unsuccessful bidders with an opportunity for feedback;
- the procedures used by TfL to manage the project and contracts following award.

However, TfL's role in the project was unclear from the outset and this was a strong factor in there not being an agreed procurement strategy in place. It is clear that the project would have benefited from a procurement strategy, although the reasons for not having one are understandable. Two different procurement approaches were adopted and, in both procurements, there were some instances where TfL policy and procedure with regard to communication with bidders and tender evaluation were not fully complied with.

Management actions have been agreed and are being taken forward to ensure that established processes are followed in the future.

Introduction and background

The Mayor's Transport Strategy (MTS) and London Plan set out the need for better connectivity for pedestrians in Central London. The MTS is particularly supportive of schemes that will reduce walking time to and from Public Transport. In addition to this, it has been recognised for some time that a direct link between Temple and the South Bank would improve pedestrian traffic in the area and support better transport links.

In early 2013, the Commissioner and Managing Director Planning of TfL met with the Mayor, following a presentation the Mayor had received from Thomas Heatherwick Studio regarding a proposal for a "Garden Bridge". At this meeting the Mayor stated his desire for TfL to consider whether the construction of an innovative and novel design based around a living bridge concept would be feasible. TfL agreed to develop a concept for a new bridge in the area on behalf of the GLA.

At the time TfL did not have a framework to cover this type of work and was seeking design concepts that would be innovative and novel and provide more than just a pedestrian footbridge. It was agreed to engage with three market leading companies with a track record of delivering unique and world class designs. TfL decided to approach Wilkinson Eyre Architects, Marks Barfield Architects and Thomas Heatherwick Studio all of whom had the relevant and suitable experience for a project of this type.

In February 2013 TfL ran a tender to procure a design advisor to "help develop this concept" and understand scale of costs and benefits of the scheme. Following the technical and commercial evaluation of the bids, the contract ('TfL 90711 Design Services') was awarded to Thomas Heatherwick Studios in March 2013 with a capped fee of £60,000. TfL's contract with Thomas Heatherwick Studio ended in July 2013.

During March 2013 the TfL scope evolved quickly following a request by the Mayor to progress the project and submit a planning application. There are a number of Mayoral Directions relating to this project. It is clear that TfL did not expect, in the early stages, that this project would be undertaken in these timescales, or that TfL would be involved to the level it subsequently became. TfL took on the role "of enabler, securing the necessary powers and consents, helping to secure the funding for construction and future maintenance from third parties, helping to establish an appropriate structure for its delivery and, potentially, providing project management expertise during construction."

In April 2013 a second tender was issued to develop the technical design of the bridge, to enable a planning application to be submitted. The tender process used the TfL Engineering & Project Management Framework and went through the formal stages of Expression of Interest and Invitation to Tender. The Invitation to Tender was issued to 13 companies from the framework and tenders were received on 7 May 2013, with clarification

interviews held with four bidders between 14 and 16 May 2013. Subsequently Arup was awarded the contract as lead consultant ('TfL 90001 Task 112 Temple Bridge') and resulted in a final fee of £8,422,000.

Following the award of both contracts, TfL continued to progress the project until it was able to transfer all management responsibility to the Garden Bridge Trust in 2015. The TfL contract with Arup ended in April 2015.

On 3 June 2015 the Leader of the London Assembly Liberal Democrat Group, Caroline Pidgeon MBE AM, wrote to the Commissioner of Transport for London raising a number of questions relating to the procurement of the design services for the Temple to South Bank footbridge.

The Commissioner responded to this letter on 15 June 2015 and confirmed that a review of the design contract procurements would be undertaken and the findings published.

Objective and scope

The objective of the audit was to provide assurance that the procurements of design and development services for the Temple to South Bank footbridge Project were undertaken in accordance with procurement regulations and approved procedures, and were open, fair and transparent.

Findings

The audit findings are set out below under the scope headings agreed at the commencement of our work.

Procurement management processes and compliance with UK and EU guidance

The procurement approach adopted for TfL 90711 Design Services was appropriate, and follows accepted practice in TfL for projects of this monetary value. TfL Legal provided TfL Planning with some initial legal advice on the Procurement Issues and Powers relating to delivery of the Garden Bridge on 8 January 2013. At this stage it wasn't clear what the extent of TfL's involvement would be in the project and the advice was given on the assumption that TfL might be the delivery body for the entire project. The advice sets out a number of options for the procurement process that might be used for the selection of the design team and concludes that "a design contest or a competition through OJEU might be a suitable process." Subsequently, a decision was taken to split the procurement into two parts with the first phase being a short design exercise, to be commissioned through a small tender and the second part to be procured through the existing TfL consultancy frameworks.

In both procurements there was some informal communication between TfL Planning and individual bidders outside of the formal tender process, as described below:

TfL 90711 Design Services

- 8 February 2013, TfL Planning issued the design brief to all three bidders, ahead of the formal release of the ITT on 13 February 2013. This was done in order to make all three bidders aware of what was coming shortly so that they had the resources available to respond, but was outside TfL Policy on engagement with bidders.
- 26 February 2013, an email was sent from TfL Planning to Thomas Heatherwick Studio requesting clarification on which rates apply to which people in the Heatherwick Bid as this was not clear in the bid. This communication should have been made through the e-procurement portal.
- Thomas Heatherwick Studio were informally notified by TfL Planning that they had been successful in their tender, before the formal notification by TfL Commercial to all bidders through the e-procurement portal.

TfL 90001 Task 112 Temple Bridge

- During evaluation of the tenders, TfL Planning made a direct request (by telephone) to Arup to reduce their day rates. This is discussed more fully in the Evaluation Process section below.

Communications outside of the formal tender process are inconsistent with TfL policy and procedure.

Selection and pre-qualification of bidders

The audit identified no issues with regard to the selection of bidders in either procurement.

Three bidders were selected for the TfL 90711 Design Services tender in accordance with TfL Commercial guidance. TfL Planning selected the bidders on the basis of their experience and their ability to provide a unique and innovative design.

Bidders for TfL 90001 Task 112 were selected through a formal Expression of Interest, issued to companies on the Engineering & Project Management Framework.

The process for developing and approving the Invitation to Tender, contract and associated documents

The audit identified no issues with the development of the tender and associated contract documentation.

Evaluation process for Invitation to Tender and management of bid clarifications

The audit identified a number of issues considering the evaluation and analysis of the tenders in both contracts.

TfL 90711 Design Services

- The technical evaluation of the three bids was undertaken by a single person in TfL Planning and endorsed by the MD Planning. From our interviews with those involved, the respective roles of TfL Planning and TfL Commercial in the evaluation of the bids were unclear and should have been better defined from the outset. The technical and commercial evaluations of the three bids were undertaken by the same person, which is inconsistent with TfL procedures and guidance on managing procurements and accepted good procurement practice.
- Some of the documentation to support the commercial analysis of the day rates used in the evaluation could not be located at the time of the audit.
- The rates submitted by the three bidders varied significantly. As a result, a decision was taken to give all bidders the same evaluation score, and the contract was awarded as a fixed fee and capped at £60,000.

TfL 90001 Task 112 Temple Bridge

- The commercial submission from Arup on 7 May 2013 was in the form of an Excel spreadsheet providing day rates. We would have expected a formal commercial submission.
- No supporting documentation relating to the individual technical evaluation scores was available to review. We have been told the documentation was held in hard copy by the TfL Planning Project Manager until recently when, as a result of an office move and introduction of hot desking policy, it was disposed of. Interviews with those involved show that the first tender evaluation was carried out in accordance with TfL procedures.
- Initial scoring placed Arup 7th out of the 13 bidders because of their higher cost in spite of the fact their technical bid was judged by the

evaluation team to be the strongest. However, a decision was taken to interview Arup as they had the strongest technical bid.

- At this point it was decided to contact Arup to ask them to review their fees, with a view to reducing them, leading to a second submission. The rationale given for this was the Arup technical bid was much stronger than the other bids and it was their price that affected their scoring. The gap between Arup's technical score and those of the other bidders increased further following the interview stage. None of the other bidders were given the opportunity to revise their submissions and there was no Best And Final Offer stage included in the procurement. It would have been best practice to have done this.
- There was a small error in the analysis of Arup's commercial submission. Each bidder was required to submit day rates in each defined area for five roles, these were Partner/Director, Principal Consultant, Senior Consultant, Consultant and Junior Consultant. In the analysis of the Arup commercial submission the rates for Consultant and Junior Consultant were taken from the 7 May submission and the rates for Partner, Principal Consultant and Senior Consultant were taken from the second submission. The rates used in each analysis were the lower of the two rates provided. This error resulted in an uplift in the Arup score from 19.26% to 19.85%. However, it should be noted that the additional 0.59% did not affect the final placing of the bidders.

The manner in which the evaluation process in both procurements was undertaken did not follow TfL procurement policy and procedure in a number of instances. However, the audit did not find any evidence that would suggest that the final recommendations did not provide value for money from the winning bidders.

Contract award and debriefing

The audit has not identified any issues with the procedure used by TfL when awarding either contract and providing the unsuccessful bidders with an opportunity for feedback.

Arrangements for post contract award management

The audit has not identified any issues with the procedures used by TfL to manage both the project and contract following the award of both contracts.

Recommendations

Awareness of Policies, Procedures and Guidance

TfL has in place a number of policies and procedures setting out its requirements for the governance of procurements, including the TfL Code of Conduct and the TfL Procurement Policy. The TfL Corporate Disposal Schedule sets out requirements for retention of documents. These policies and procedures were not followed in all cases, which may reflect a lack of understanding of requirements by the staff concerned. An effective briefing on procurement procedures by TfL Commercial might have prevented some of the issues from arising.

Recommendation –Individuals involved in the management and delivery of procurement activities are responsible for ensuring they are fully aware of the requirements placed on them and TfL by guidance and statute to ensure best practice is followed. Planning staff involved in procurement activities should make themselves aware of these requirements.

At the start of any procurement, and commensurate to the size and level of risk, TfL Commercial should brief all staff involved in the process giving clear instructions relating to:

- *the process that will be followed,*
- *roles and responsibilities,*
- *the documentation they will be expected to produce and provide to TfL Commercial*
- *escalation procedures for reporting non-compliance*

This briefing will emphasise the rules of engagement with bidders and the need for segregation of duties during the evaluation of bids.

TfL Commercial should develop a training package on TfL's procurement processes for use with staff who are not familiar with them, and for staff who are new to TfL. The purpose of this training material should be to raise awareness of the guidance available, the policy and procedure that must be followed and the potential ramifications of non-compliance.

We have been informed by TfL Commercial that over the past year the Commercial Centre of Excellence (now called Commercial Strategy and Performance) have led a piece of work to identify the methods of tender evaluation across TfL and Crossrail and to use best practice to develop a consistent approach to bid evaluation. The new approach is currently being rolled out and will be mandatory from Oct 2015.

Enforcement

The audit found some instances where TfL Commercial staff had raised issues during the process with regard to the communication with bidders and the evaluation of tenders, which were not acted on.

Recommendation – TfL Commercial should be robust in ensuring that issues in relation to the procurement process are highlighted on a timely basis and escalated as appropriate to ensure action is taken to mitigate any breaches of policy or procedure.

Review of evaluation models

As noted above, there was an error in the analysis of Arup's commercial submission.

Recommendation – TfL Commercial should identify the reason(s) that led to this error and whether improved controls need to be put in place.

Conclusion

The audit did not find any evidence that would suggest that the final recommendations did not provide value for money from the winning bidders.

However, TfL's role in the project was unclear from the outset and this was a strong factor in there not being an agreed procurement strategy in place. It is clear that the project would have benefited from a procurement strategy, although the reasons for not having one are understandable. Two different procurement approaches were adopted and, in both procurements, there were some instances where TfL policy and procedure with regard to communication with bidders and tender evaluation were not fully complied with.

We would like to thank all those who were involved in and contributed to this audit.

Please do not hesitate to contact Roy Millard, Senior Audit Manager, or me, if you would like to discuss this further.

Kind regards

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