



COUNCIL EXECUTIVE

MODERNISING PROCUREMENT REVIEW

REPORT BY HEAD OF FINANCE AND ESTATES

A. PURPOSE OF REPORT

To provide the Council Executive with a summary of the findings and recommendations of a comprehensive review of procurement within West Lothian Council.

B. RECOMMENDATION

It is recommended that the Council Executive:

- note the findings of the Modernising Procurement review
- approves the recommendations set out in the review
- instructs officers to implement all the recommendations in the review by March 2013
- approves the proposed Corporate Procurement Strategy as set out in Appendix F of the review
- notes that appropriate revisions to council standing orders to reflect the revised management arrangements in the report will be considered by the Working Group on Contracts Standing Orders and reported to the Partnership and Resources Policy Development and Scrutiny Panel (PDSP)
- agrees that a report on the issues surrounding incorporating a “living wage” requirement into contracts is prepared for the Partnership and Resources PDSP.

C. SUMMARY OF IMPLICATIONS

I Council Values

Focussing on our customers’ needs; being honest, open and accountable; making best use of our resources; working in partnership.

II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)

In accordance with the recommendations of the McClelland Report and the Scottish Procurement Reform Delivery Group, and the council’s financial regulations, the council will embark upon an ongoing implementation to deliver the recommendations of the report and thereby ensure efficient and effective procurement practices for the council. In relation to equality impact assessment, any workforce changes arising from the review will be implemented in accordance with the council’s agreed corporate organisational change policies and procedures, which were subject to an equality impact assessment in 2010.

In terms of issues related to council procurement, the equality officer has advised that the Scottish Government is currently considering the content of the public sector equality duty and, as such, it would be appropriate to carry out an equality impact assessment on the proposals in the review when the position has been clarified. Estimated timescales for this are late autumn 2011.

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| III Resources - (Financial, Staffing and Property) | Proposals are outlined to improve the efficiency of procurement activity within the council. |
| IV Consultations | Employees, managers, trade unions, elected members, other services and other Public Sector bodies, through ongoing processes. The report was considered by the Partnership and Resources PDSP on 17 June 2011. The PDSP agreed the report should proceed to the Council Executive and requested that a report should be prepared on the issues around incorporating a living wage requirement into contracts. Following questions at the PDSP it has been clarified in the report that the Working Group on Contracts Standing Orders is responsible for considering any required revisions to standing orders and reporting these to members. In addition, the proposed limit for reporting contracts to the Council Executive is now proposed as the EU procurement thresholds for supplies and services and works, which is consistent with current arrangements. |

D. TERMS OF REPORT

1. Background

The Council Executive agreed in 2010 that a comprehensive review of all council Procurement should be undertaken.

Following consultation, a scoping document was published in November 2010 and a project team was established with representation from core service areas, along with Internal Audit and Legal Services in December 2010.

2. Introduction

The scope of the Modernising Procurement project sets out the need to consider and review procurement policies, strategies, procedures, systems, compliance and responsibilities with an objective of ensuring that the council's future procurement activities are efficient and effective in meeting the challenges in the years ahead.

The review of Procurement within the council has produced a number of findings and recommendations including the following:

- Corporate approach to procurement
- Procurement roles and responsibilities
- Corporate Procurement Strategy
- Standing Orders and compliance
- Procurement Capability Assessment / McClelland Recommendations

- Contract spend and management
- Collaborative procurement
- Performance management

The co-ordination of the report has been undertaken by Merle Stevenson, Project Manager within Finance & Estates Services, and the content has been endorsed by the Modernising Procurement Review project team. This note provides a summary of the detailed report, which is provided as an attachment.

3. Consultation

Extensive consultation was carried out within the council. Members of the Procurement Services Unit completed comprehensive surveys and attended one-to-one meetings where suggestions for procurement improvements and efficiencies were provided. A number of improvement opportunities have already been implemented as a result of the Procurement Services consultation.

Meetings were held with key staff from Social Policy, Operational Services and Housing, Construction and Building Services who have responsibility for significant procurement activity within the council. This led to an understanding of contract activity outwith Procurement Services and was an opportunity to identify further improvements. The Trade Union has been updated with developments and consulted on the review findings and will be consulted on any workforce organisational change arising from the review.

Meetings were arranged with a number of other councils (Renfrewshire, Aberdeen City, Aberdeenshire, Scottish Borders and North Lanarkshire) who have demonstrated improved procurement performance in recent years. These councils have undertaken procurement reviews and were able to provide guidance and documentation which proved immensely beneficial.

A report containing the findings of the review and recommendations for improvement was generated and presented at the Partnership and Resources PDSP on 17 June 2011. The Panel agreed that the report should progress to the Council Executive, subject to consideration of reporting limits, the responsibility for updating and reporting to any required changes to standing orders arising from the findings of the review, and agreement to report to the Partnership and Resources PDSP on the implications of incorporating a living wage provision in contracts.

Audit Scotland have also been consulted and have advised that the review of procurement has been very comprehensive and has covered all areas that interested Audit Scotland.

4. Corporate Approach to Procurement

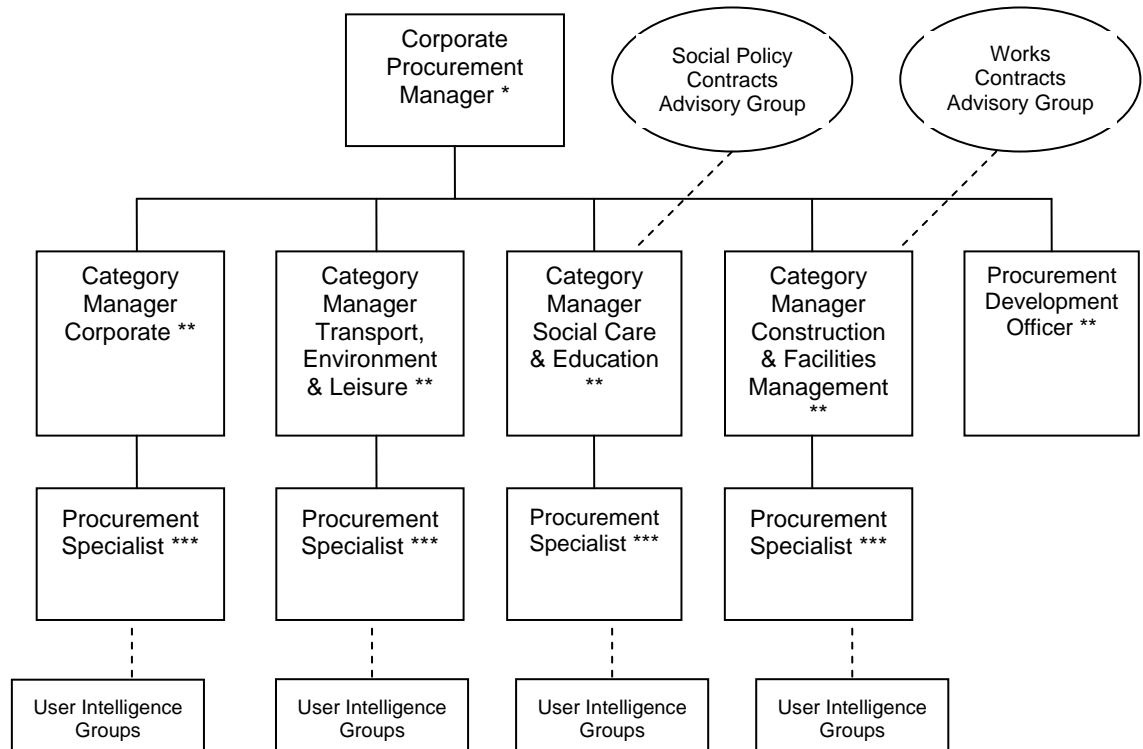
A number of draft papers were produced during the review, e.g. EU Procurement Rules, Regional Procurement, Contract Management and Procurement Strategy & Financial Strategy Integration, which highlighted the various procurement processes, techniques and systems employed throughout the council. These papers resulted in a number of conclusions and recommendations for improvements to procurement practices and clear guidance for services to ensure compliance.

5. Procurement Roles and Responsibilities

Procurement activity is currently carried out by the Procurement Services Unit and various other teams and staff within the Services. There is a varied level of understanding of procurement rules and techniques in the council. The current staffing arrangements are regarded as being indicative of a traditionally fragmented, low profile approach to procurement and lack the necessary corporate control for West Lothian Council to succeed with superior procurement performance.

Alternative options for service delivery have been assessed, however to improve corporate control over the procurement and management of supplies, services and works, it is proposed that a Category Management procurement structure be implemented.

West Lothian Council Corporate Procurement Unit - Proposed Structure



* Corporate Procurement Manager reports to Head of Finance and Estates

** Category Managers and Procurement Development Officer report to Corporate Procurement Manager

*** Procurement Specialists report to allocated Category Manager

The Category Management structure will be flexible and although categories have been designated above, they may be subject to change dependent upon the dynamic procurement requirements.

The proposed structure will enable significant procurement transformation, allow for increased specialisation and skills development and will facilitate advanced procurement development within the council.

Category or commodity management is the preferred method of delivering procurement for the majority of councils consulted, including those independently assessed as performing well and achieving excellent outcomes. The classification of expenditure into categories has helped them to identify where contracts are in place and what opportunities are available for future contract provision. The implementation of this model will enable the implementation of cost saving opportunities in a consistent and structured manner.

To ensure stakeholder requirements are met and maximum compliance is achieved, it is important to ascertain key stakeholders throughout the full contract lifecycle. User Intelligence Groups must be established to assist contract strategy development, tender evaluation contract monitoring and supplier management, project implementation, and compliance and benefits tracking.

To ensure operational contingency arrangements are put in place which will allow for sharing of knowledge and skills and permit improved staff development, it is proposed that the procurement administration and eprocurement support functions transfer to the Financial Management Unit's Corporate Strategy Accounting Support Team. This will facilitate the creation of a purchase to pay support team for the council, with sufficient numbers of staff to permit the necessary segregation of duties.

6. Corporate Procurement Strategy

A new Corporate Procurement Strategy 2011 – 2014 has been developed in response to the dynamic procurement agenda, the current financial climate and the need for the council to comply with the Climate Change (Scotland) Act. The 2011-2014 Strategy sets out a corporate focus, direction and vision for all procurement activities, while establishing a robust governance structure.

Advocating collaborative procurement activity, the Strategy promotes the highest standards of professionalism and sharing of experience and best practice. Promoting access to small and medium enterprises, local businesses, social enterprises and the third and voluntary sectors, the Strategy endorses fair, ethical and effective relationships with suppliers.

It is anticipated that the Corporate Procurement Strategy 2011-2014 will facilitate successfully delivery of the financial savings and other council procurement objectives.

Use of the Strategy will be mandated throughout the council and will be reflected and interpreted in conjunction with the council's Standing Orders.

7. Sustainable Procurement

Sustainable Procurement is to be embedded throughout council procurement processes. The council will actively seek to procure supplies, services and works that are not detrimental to the environment and where it is appropriate to do so will incorporate sustainable development considerations within specifications and tender award evaluation criteria. Whole life costing methods will be employed where it is pragmatic to employ such techniques, and the council must always strive to procure cost effective sustainable solutions.

The council's sustainability procurement parameters and objectives are an integral element of the Corporate Procurement Strategy 2011-2014 and therefore promote the consideration of environmental, economic and social factors in all procurement activities.

The Corporate Procurement Strategy 2011-2014 will enable sustainable procurement to be implemented within West Lothian Council.

8. Procurement Capability Assessment / McClelland Recommendations

The Procurement Capability Assessment was developed by the Scottish Government to promote the sharing of best practice and continuous improvement across the Scottish Public Sector. An analysis of the council's 2009 and 2010 Procurement Capability Assessment submissions and scores was performed and a Procurement Capability Assessment Action Plan has been developed to improve the council's procurement performance. The activities from the Procurement Capability Action Plan must be progressed to completion by the council.

The Review of Public Procurement in Scotland: Report and Recommendations, undertaken by John F McClelland CBE was published in March 2006. This report identified weaknesses in resources, structures, skills and practices which impacted on the achievement of Best Value and found a potential for significant cost savings through better performance.

The recommendations from the McClelland report have been reviewed and outstanding activities to establish the council's compliance have been highlighted for action.

9. Identify Core Procurement Activities that must be delivered in Accordance with EU Procurement Rules

Public Procurement law regulates the procurement by Public Sector Bodies of contracts for supplies, services and works. To assist Public Sector Bodies, the Scottish Government's Procurement Directorate has developed a set of generic procurement procedures called the Procurement Journey: Routes 1, 2 and 3, which provide best procurement practice guidance primarily aimed at developing and implementing procurement strategies for supplies and services. The Construction Procurement Manual has been developed for detailed guidance on works and construction related projects and guidance is also available which is specific to Social Care procurement. All of the guidance provided is subject to further enhancements upon changes in legislation, policy and promotion of best practice.

It is proposed that a standard methodology is adopted to ensure consistency of approach and that best practice is followed. As such the Procurement Journey Routes 2 & 3 will be analysed and tailored to meet the needs of West Lothian Council to ensure that strategies, guidance and templates are provided which ensure necessary adherence to EU Procurement Rules and Treaty Principles.

The Construction Procurement Manual, which is mandatory throughout the Scottish Government, should also be reviewed and where appropriate, tailored to meet the needs of West Lothian Council's Work contracts.

There is a need to develop the working relationship between the new Corporate Procurement Unit, the Financial Management Unit, Legal Services and council service areas responsible for Social Care and Works contract commissioning and procurement activities. Regular meetings must be held and rigorous and robust procurement processes need to be developed and implemented for use with all contract types, covering the whole contract lifecycle.

10. Roles and Responsibilities of Officers who currently Undertake Procurement Activity throughout the Council

To ensure stakeholder requirements are met and maximum compliance is achieved, it is important to ascertain key stakeholders throughout the full contract lifecycle. A high level guide has been developed which clearly illustrates the procurement roles and responsibilities for Elected Members, Chief Officers, Heads of Service, Line Managers, Operational Staff and the Corporate Procurement Unit.

A detailed roles and responsibilities document will be produced to provide an indication of the level of involvement required from all parties during the whole contract lifecycle and the council's Scheme of Delegation will be updated to reflect the roles and responsibilities of officers undertaking procurement activity within the council.

11. Confirmation of Key Competencies and Skills Needed for Procurement Personnel

There is a need for the council to build procurement capability to ensure that procurement activities meet the objectives of the Corporate Procurement Strategy. The procurement skills within the Corporate Procurement Unit and other services will be assessed to ensure that officers are well equipped to manage contracts, to add value to the process and to steer, guide and monitor the council's approach to procurement.

Procurement training needs must be determined throughout the council and formal training sessions, tailored to suit the nature of the tasks undertaken, arranged for procurement professionals from all appropriate service areas.

The procurement competency framework (Scotland Excel technical competency framework or equivalent) must be rolled out as a means of assessing the training requirements for all council procurement professionals.

12. Procurement Service Standards and Performance Targets

It is perceived that the Service Standards currently in place do not meet customer needs and a number of the standards cannot be quantified. Changes to the procurement landscape and priorities for the council must be addressed through a revised set of service standards.

Performance against the Corporate Procurement Strategy objectives, and targets will be reviewed at the Procurement Steering Board, and at quarterly performance review meetings.

Covalent will continue to be used to record procurement performance, however data must be included which relates to council wide procurement activity.

13. Council's Terms and Conditions

Successful contract implementation, subsequent contract management and risk minimisation are assisted by having robust terms and conditions which assist when there is conflict throughout the contract lifecycle.

There are presently different terms and conditions for the supply of goods, services, social care, construction works and passenger transport services. There is also a set of terms and conditions for IT equipment, however, these are dated and require amendment.

Construction and civil engineering works contracts use the Joint Contracts Tribunal (JCT) and Institution of Civil Engineers (ICE) conditions of contract. Both JCT and ICE are responsible for reviewing and updating the standard forms of contracts, guidance notes and other standard documentation used by West Lothian Council.

Procurement Services staff have previously had the opportunity to review model terms and conditions for both goods and services and have recently submitted further amendments to Legal Services for consideration. Legal Services have also recently reviewed passenger transport and social care terms and conditions. However, there is no scheduled review period for assessing whether terms and conditions are appropriate and no evidence of any document or version control.

To ensure commercial risk is minimised, it is essential that a standard contract suite of robust terms and conditions be initiated to cover all tendering opportunities. A formal review of council model terms and conditions must take place on an annual basis.

14. Contract Extension / Variation Process

Subject always to compliance with the EU Procurement Rules and the council's Standing Orders and Procurement Procedures, the council can alter, extend or re-negotiate any part of a contract to achieve Best Value. A written record justifying the reasons for this course of action together with the approval from the Head of Finance and Estates for Supplies and Part A Service contracts, the Head of Social Policy for Part B Service contracts and the appropriate Deputy Chief Executive's approval for Works contracts must be obtained before proceeding.

A new Step by Step Guide and templates will be produced to simplify the variation process and to enable a consistent approach and make sure that unofficial extensions are not permitted in any circumstances.

Financial Management Unit must to be notified of significant price variations to allow them to make amendments to budgets.

15. Council's Standing Orders and Compliance

To ensure that the procurement of supplies, services and works is carried out to the highest standard and that efficiencies set out in the Corporate Procurement Strategy are achieved, all procurement must be undertaken in accordance with the Council's Standing Orders and associated procedures.

To promote greater ownership of responsibility for procurement compliance and to achieve greater compliance from council staff involved in procurement activity, Standing Orders in relation to procurement will be revised by the Working Group on Contracts Standing Orders and reported to members for approval.

The Working Group will update the existing Standing Orders to ensure that they provide accurate, robust, clear and understandable procedures which underpin the management arrangements set out within this report, including support of the proposed new corporate procurement framework and the mandatory use of the corporate contract register to record details of all contracts.

It is important that Standing Orders ensure that users understand the content and their own responsibility for compliance. It is therefore proposed that a diagrammatical representation of the procurement procedures is considered by the Working Group for inclusion in Standing Orders to give officers a clear illustration of the route they should take for a contract.

16. Contract Compliance

Devolved buying by services is firmly established within the council and it is possible to place off-contract orders. Services have not taken ownership of the need to ensure compliance and systems to monitor contract compliance have not been established.

The council's use of its eProcurement system (PECOS) was expected to drive the ordering of supplies and services through established contracts. This is not yet the case, as non-compliant procurement behaviour remains a persistent issue.

A flag highlighting contracted suppliers has been implemented within the Supplier Contact Facility on the intranet. It is hoped that the preferential rates offered by contracted suppliers for non-contracted supplies and services will encourage their use over non-contracted suppliers. Additionally, the use of a 'Preferred' supplier flag on PECOS is being explored to promote the use of contracted catalogue items over non-contracted items.

It is imperative that the revised Standing Orders are appropriately communicated to all council employees. It is vital that all officers with responsibility for operational procurement activity have a total clarity of expectation and understand their responsibility and the consequences of non-compliance.

To enable the withdrawal of unnecessary non-contract suppliers and to provide additional opportunity to make cash savings, the Corporate Procurement Unit and Services must work to increase the percentage of contracted spend.

17. Contract Management

Although contract management is performed for a number of specific contract types throughout the council, it is clear that effective contract management is not consistently practiced. There is a lack of operational contract management for a number of contracts, which contradicts the aims of the Scottish Procurement Directorate's Suppliers' Charter, the McClelland Report recommendations and the Procurement Capability Assessment requirements.

To drive value from existing and any future contracts and to improve supplier management and supplier relationships, a Contract and Supplier Management Strategy has been developed. The Contract and Supplier Management Strategy should be agreed and enforced throughout the council for Supplies, Part A Services and where applicable for Works contracts, to implement consistent and cross-service processes.

Social Policy will continue to develop a contracting plan with a risk assessment framework for prioritising social care contract monitoring. The Social Policy contract management system will continue to be developed to compliment the corporate contract management approach.

18. Management Reports Available from PECOS to Enhance Reporting Information

An abundance of procurement information is held in various forms and across numerous databases and files throughout the council. Although beneficial to individual service managers in its current format, this diversity of information sources is wasteful to the council as a whole.

It is proposed that PECOS provides a single source of management information with regard to council spend. As such, it is imperative that the outstanding interfaces to PECOS from Operational Services Axim system and Housing, Construction and Building Services Open Contractor system be completed as a matter of urgency in the current financial year. This will ensure that data from legacy systems is reportable through the council's PECOS datamart.

19. Collaborative Procurement

Collaboration is high on the council's agenda over the next few years and to take advantage of potential collaborative benefits the council should ensure that collaborative procurement opportunities are exploited, not only with Scotland Excel and Scottish Procurement, but with other councils and Public Sector Bodies. The use of the Contract Strategy will encourage officers responsible for procurement to engage with the marketplace, identifying, assessing and delivering the most effective and efficient procurement solution and as part of the contract development, investigate possibilities for collaborative procurement.

Annual approval of the Corporate Procurement Strategy by Elected Members will provide the council with the endorsement to use Category A and B framework contracts provided by Scottish Procurement, Scotland Excel and OGC Buying Solutions.

Where the collaborative contract provided by Scottish Procurement, Scotland Excel or OGC Buying Solutions does not meet council needs or does not represent value for money, a business case for exemption must be presented to the Council Executive prior to the commencement of the tender process.

20. Remit and Constitution of Inter-service Procurement Meeting Groups

Although a number of Procurement inter-service meeting groups exist, they are not all perceived as being productive. The Procurement Forum for example, has been established for a number of years, the purpose of which was to be an opportunity for strategic procurement decision making, yet attendance has dwindled, indicating a failure to appreciate the importance of procurement within the council.

It is recommended that a Procurement Steering Board is be established and that this board is chaired by the Chief Executive and attended by senior representatives from each service, the Corporate Procurement Manager, the council's Sustainable Procurement Champion and a representative from Legal Services. The creation of this Board will demonstrate senior management leadership and commitment and accelerate procurement development throughout the council.

The Social Policy Contracts Advisory Group meets on a six weekly basis and includes representation from Procurement Services, Legal Services and the Financial Management Unit, as well as attendance by the Head of Social Policy, Social Policy Senior Managers and Social Policy staff responsible for contracting arrangements. This meeting allows full consideration and decision making about all Part B Services sufficiently in advance of the establishment, renewal or termination of contracts.

Current Works contract arrangements are similar to that of Social Policy, in that procurement activities are devolved from Procurement Services responsibility. Currently, Procurement Services often do not have sight of contract details or the procedures followed prior to and in some cases until after contract award.

Following the successful contracts advisory group model operated for Social Care, a Works Contracts Advisory Group should be established. The remit and constitution will be similar to that of the Social Policy Contracts Advisory Group but apply to Operational Services and Housing, Construction and Building Services staff engaged in arranging and managing Works contracts.

21. Information Technology and Developments to Improve Procurement Activity

West Lothian Council procurement and IT Services have implemented many IT developments over the past number of years and this is an area that has received considerable recognition from external public bodies, audits and assessments.

As the council is keen to improve and indeed achieve superior performance, there is merit in extending the previous good practice demonstrated by considering additional IT enhancements.

The development of the new bespoke corporate contract register must be completed as a priority. This will replace the online version currently promoted by the Scottish Government, by providing enhanced contract details required by the council.

To facilitate the delivery of a new corporate procurement model within the council and to enable access to all the necessary procedures, guidelines and templates required to perform procurement activity, the existing Procurement Services intranet site must be re-designed.

22. Contract Evaluation Criteria Policy and Financial Reporting

Historically, reports to elected members have not provided extensive information on why contract award criteria were selected. There are also issues with the current approval and reporting process, as under current arrangements, unless there are known grounds for excluding an economic operator, there is very limited scope to change the procurement decision. Indeed, if the Council Executive were to change a procurement report, there is the potential for challenge from an unsuccessful supplier.

The current threshold for supply and service quotations is £30,000 and council Standing Orders dictate that up to three quotations are sought for contracts up to this level. The quotation process is less formalised and resource intensive than the competitive tender process with more simplified documentation, whilst ensuring that adherence to the EU treaty principles of non discrimination, equal treatment, and transparency.

The council has successfully trialled and is in the process of rolling out the Scottish Government's online request for quotation facility "Quick Quote" provided through Public Contracts Scotland. Quick Quote obtains competitive quotes for low value (up to £50,000) low risk opportunities.

It is proposed that the tender threshold for supplies and services and works contracts is raised to £50,000, to increase the number and value of tender opportunities for local suppliers, SMEs, the voluntary sector, the third sector and supported businesses.

It is also proposed for all West Lothian Council procurement exercises in excess of the EU threshold (£156,442 for supplies and services and £3,927,260 for works contracts), that the tender award criteria and other considerations e.g. community benefits are reported to Elected Members and agreed at the beginning of the process.

It is proposed that there is reporting for information to the Council Executive at months 4, 6, 9 and out-turn providing information on use of frameworks and contracts let by the council during the previous quarter.

23. Shared Services

Sharing services can maximise the potential economies of scale, deliver service improvements and enable further savings through contract alignment.

Initial discussions have been held between West Lothian and Falkirk Councils to determine if there is an opportunity for collaborative working. Falkirk Council is comparable in size to West Lothian and is at a similar state of maturity with regard to procurement progression. Falkirk Council is also embarking upon a review of Procurement and this presents an excellent opportunity to collaborate with regard to improvement plan actions.

It is proposed that the sharing of responsibility for delivering improvement plan actions and opportunities for sharing improvement tasks should be explored with Falkirk council.

24. Implementation

The objectives of the Modernising Procurement Review will be achieved through the implementation of the outstanding actions from the detailed Modernising Procurement Review report. Following incorporation of feedback from staff, trade unions, and customers, it is intended to implement the recommendations as part of an ongoing modernisation programme, from July 2011 onwards.

An implementation plan will be developed once the final report has been agreed. The plan will document the actions, responsible owner and timescales required to deliver the recommendations in the report, prioritising those with greatest value and importance.

Given the benefits to be accrued it is envisaged that most changes and improvements will be implemented within 12 months of report authorisation and full implementation completed by March 2013.

To assist in the process, some additional temporary staffing resources will be required. Organisational changes will be implemented with appropriate consultation with staff, customers and trade unions and in accordance with agreed council policy and procedures.

E. CONCLUSION

Implementing the recommendations from the report will result in improvements to governance, leadership, processes and skills. Furthermore, greater emphasis will be placed on both procurement efficiency savings and procurement cashable savings, leading to a consistent approach to the procurement of supplies, services and works, improving service delivery and achieving Best Value from all council procurement activity.

F. BACKGROUND REFERENCES

Review of Procurement Arrangements – report by Head of Finance and Estates to the Partnership and Resources PDSP 17 June 2011

Appendix: Procurement Review report and appendices

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