

WEST DUNBARTONSHIRE COUNCIL**Report by Chief Executive****West Dunbartonshire Council: 14 May 2019**

Subject: Audit Scotland Review of Investigation into Tendering and Contracting Practices in Roads and Greenspace Services**1. Purpose**

- 1.1 The purpose of this report is to update members on the outcome of the Audit Scotland review of the Council's internal audit investigation into Tendering and Contracting Practices in Roads and Greenspace Services and recommendations arising.

2. Recommendations

- 2.1 The Council is asked to:

- (i) Note the contents of this report;
- (ii) Note the report and recommendations from Audit Scotland at Appendix A;
- (iii) Note the Council action plan outlining progress to date and further planned activity at Appendix B; and
- (iv) Note that the report and appendices will be presented to the Council's Audit Committee on June 12, 2019.

3. Background

- 3.1 An investigation was undertaken by Internal Audit into tendering and contracting within Roads and Greenspace following an allegation by a member of the public to the Council's whistleblowing hotline in March 2016. The caller, who requested that their identity was not revealed, alleged that employees within the Council had received hospitality from a company which was engaged by the Council to undertake work within two service areas and that contracts were being awarded to that company as a result of hospitality provided.
- 3.2 Internal auditors examined a number of documents including receipts provided by the person who made the allegations which had names of individuals handwritten in pen on the back. These were queried as part of interviews with the employees whose names appeared on any of the receipts. In a number of occasions the employees can evidence that they were not in attendance. The hospitality allegations were found to be unsubstantiated. The audit also analysed 27 contracts relating to 11 different contractors within the two service areas across the period 2013 to 2016 and found that within this sample, procurement procedures had not always been followed, resulting

in most of this work being awarded outwith the Council defined methods of procuring such works. A summary of these findings accompanied by an action plan outlining how these procurement issues were being addressed was presented to the Council's Audit Committee on 12 December, 2018.

- 3.3** A disciplinary process was undertaken, in line with the Council's Disciplinary Policy, in relation to the procurement issues. This concluded in May 2018 and found there was no basis for action to be taken against any individual employee.
- 3.4** Police Scotland was notified by Internal Audit about the matter in May 2016 soon after the allegation was first received and conducted its own investigation. No criminality was established and no further action was taken. This concluded the police investigation.
- 3.5** A copy of the redacted report was issued to all elected members on February 7, 2019. Audit Scotland was contacted by the Council and confirmed that it would review the approach taken by the Council as part of its routine wider scope audit responsibility.
- 3.6** The Audit Scotland review included consideration of the work and findings reported by Internal Audit on contract tendering procedures. This incorporated:
 - Consideration of the 2018 Internal Audit report I/038/17, Investigation Roads and Greenspace – Allegation of Hospitality and Tendering and Contract Arrangements.
 - Interviews with officers, and an elected member
 - Observation of the Council meeting on 14 February, 2019
 - Review of relevant Council policies and procedures
 - Review of a number of documents provided to us by third parties relating to the allegations of hospitality being provided to council employees.

4. Main Issues

- 4.1** Audit Scotland provided a summary report on its review of the Investigation into Tendering and Contracting Practices in Roads and Greenspace Services to the Council on April 25, 2019.
- 4.2** As already demonstrated in the action plan presented to the Audit Committee in December 2018, a number of required improvements, particularly in relation to procurement, had already been identified as part of the original investigation. As reported to Audit Committee in December 2018 and March 2019, work has been undertaken to address these improvement actions. These actions, together with the specific recommendations arising from the Audit Scotland review, have been incorporated into a comprehensive action plan which is attached at Appendix B and reflects the most up to date position in relation to progress.

- 4.3** Audit Scotland confirms in its report that its team agreed with the conclusions reached by internal audit, and were satisfied that the evidence compiled by internal audit supported the conclusions reached and reported.
- 4.4** The Internal Audit Investigation
Based on an audit of a sample number of documents from 2013/14, 2014/15 and 2015/16, Internal Audit concluded that procurement policies were not always followed in Roads and Greenspace. This resulted in work being awarded without a tender process or without seeking sufficient quotes from contractors. Managers stated this practice was undertaken due to delivery pressures and the requirement to continue to deliver essential services. In practice some existing contracts had lapsed and in the absence of a replacement contract, contracts with historic rates were used with existing contractors. The service management made the Council's Procurement team aware of this approach at regular intervals.
- 4.5** Levels of non-compliance were and continue to be highlighted to Elected Members through performance indicators which are reported to Committee and Council through a range of reports including the Annual Performance Reports, Delivery Plans, Procurement Strategy and Annual Procurement Report.
- 4.6** Within the Council's current Financial Regulations there is a provision for the disclosure of departures from the Council's normal financial procedures to Elected Members, at the appropriate committee where expenditure exceeds or is likely to exceed £50,000. It has been highlighted through the audit process that this has not been done for all contracts and going forward additional measures are being implemented to address this. This includes reminding all Strategic Leads of the Financial Regulations and, in particular, areas of spend where a departure from normal processes is required to be approved, and continuing mandatory training for all staff involved in procuring contracts.
- 4.7** The most recently reported performance for recorded on contract spend was 74% (for 2017/18) with a target of 75% for 2018/19, this performance has increased steadily since 2011/12 when it was reported as 44%. The Council has set a target of 90% of all spend being on contract by the end of 2020/21. Additional controls have also been introduced to monitor spend against contracts within Roads and Greenspace. A Roads Civils Framework agreement has been in place since May 2018 which has introduced a definitive fixed pricing structure for projects in this service area.
- 4.8** As reported to Audit Committee in December 2018, an action plan was developed for the Council to address specific procurement issues raised in the internal audit and is progressing. Procurement practice, legislation and guidance has continued to evolve in recent years and in recognition of this, the Central Procurement function of the Council has been enhanced with new

approaches developed and significant work undertaken to increase the percentage of spend that is recorded as on contract. This has included the recruitment of additional staff and the provision of further support to staff involved in the tendering process.

4.9 Disciplinary process

The findings of the internal audit investigation were reviewed and considered to ascertain whether a disciplinary process should be followed. A disciplinary process was undertaken, in line with the Council's Disciplinary Policy, in relation to the procurement issues and found there was no basis for action to be taken against any individual employee. The hospitality allegations were found to be unsubstantiated and therefore did not form part of this process.

4.10 Audit Scotland in its review stated that it was the opinion of its team that these conclusions were reasonable.

4.11 In determining whether any disciplinary process was required, consideration was given to whether there had been any breach of the employee code of conduct. At the time when these contracts were awarded, the wording of the policy was not explicit and therefore the associations did not constitute a breach. The code was revised in October 2018 to provide clearer instruction around the declaration of any such relationships and requirements around the register of hospitality. In light of the Audit Scotland report, this element of the disciplinary process has further been reviewed by the Strategic Lead - People and Technology and the Strategic Lead - Regulatory. The outcome of this review is that they agree with the view taken by Human Resources at the time that there was no breach due to the wording of the policy in place at the time. Further revisions to the code will now follow in consultation with the Joint Trades Unions.

5. People Implications

5.1 There are no people implications arising from this report.

6. Financial and Procurement Implications

6.1 The internal audit report advised that as a result of the lack of formal procurement practices having been implemented the services could not prove best value had been achieved. This has been reinforced by Audit Scotland in their report.

6.2 There are no direct procurement implications arising from this report, however organisationally an ongoing improvement in practice is required to maximise spend that is on contract which will include improved compliance with Financial Regulations across the Council.

7. Risk Analysis

- 7.1** The Council is required to ensure best value for Council tax payers. The report identifies that as a result of lack of compliance with Financial Regulations the Council cannot prove best value has been achieved. Going forward increased levels of compliance will reduce this risk significantly.

8. Equalities Impact Assessment (EIA)

- 8.1** There are no equalities issues arising from this report.

9. Consultation

- 9.1** This report has been subject to consultation with colleagues across regulatory, resources and people and technology.

10. Strategic Assessment

- 10.1** The improvement actions outlined in this report will contribute to the Council's strategic priority of efficient and effective frontline services that improve the everyday lives of residents.

Joyce White

Chief Executive

Date: 30 April, 2019

Person to Contact: Stephen West, Strategic Lead for Resources

Appendices: Appendix A - Audit Scotland Review of Investigation into Tendering and Contracting Practices in Roads and Greenspace Services; and
Appendix B - Improvement Action Plan

Background Papers: Report to Audit Committee: 12 December 2018
Report to Audit Committee: 20 March 2019

Wards Affected: All