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Meeting	Audit Committee
Date	21 June 2012
<b>Subject</b>	<b>Progress Report of Procurement Controls and Monitoring Action Plan</b>
Report of	Commercial Director
Summary	Members are asked to note the progress against the Procurement Controls and Monitoring Action Plan

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Officer Contributors	Craig Cooper, Commercial Director Lesley Meeks, Assistant Director of Commercial Assurance
Status (public or exempt)	Public
Wards Affected	None
Key Decision	No
Reason for urgency / exemption from call-in	Not applicable
Function of	Council
Enclosures	Appendix A - Action Plan from Internal Audit Report Contract Procedure Rules – April 2012 plus Progress Comments
Contact for Further Information:	Lesley Meeks, Assistant Director of Commercial Assurance 020 8359 7535

## **1. RECOMMENDATIONS**

- 1.1 That the Committee note the contents of the Action Plan and the progress to date.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Audit Committee 8 December 2011 - recommended that the Assistant Director of Finance – Audit and Risk Management continue to report to the Audit Committee on the further implementation and embedding of these controls.
- 2.2 Audit Committee 26 April 2012 - recommended that the Assistant Director of Commercial Assurance report to the June Audit Committee providing assurance that the actions have been implemented in line with the recommendations.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 Having an appropriate Procurement Function supports the council's priorities in the 2011/14 Corporate Plan of delivering 'better services with less money' and a 'successful London suburb'.

## **4. RISK MANAGEMENT ISSUES**

- 4.1 The Action Plan set out identified risk(s) in relation to the key findings of the audit as reported in April 2012.
- 4.2 Without an effective procurement and contract management function there is the risk to the Council of failure to deliver value for money and having non-commercial contracts with suppliers. The Procurement Controls and Monitoring Plan has been devised to respond to identified risks.
- 4.3 There are also potential safeguarding risks if adequate procurement due diligence has not been followed. It is therefore important that the Contract Procedure Rules are embedded not only within the Corporate Procurement Team but throughout the council. The formation of a working group including representatives from all directorates has been set up and has met weekly to consider practical solutions.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 Pursuant to the Equalities Act 2010, the council is under an obligation to have due regard to eliminating unlawful discrimination, advancing equality and fostering good relations in the contexts of age, disability, gender reassignment, pregnancy, and maternity, religion or belief and sexual orientation
- 5.2 The duty applies to a person, who is not a public authority but who exercises public functions and therefore must, in the exercise of those

functions, have due regard to the general equality duty. This includes any organisation contracted by a local authority to provide services on its behalf.

5.3 The Equalities Act 2010 states that:

*Public sector organisations will be judged on outcomes and therefore have a responsibility to consider equality as part of every procurement.*

(Equality Act 2010, Part II Advancement of Equality Chapter 1 Public Sector Equality Duty Clause 149 (2)).

- 5.4 Implementation of the actions coming from the key findings from the Control and Monitoring Action Plan will ensure that the Council addresses any non-compliant contracts, taking action to ensure that all contractors comply with the general equality duty set out above.

**6. USE OF RESOURCES IMPLICATIONS (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)**

- 6.1 As set out at paragraph 7.1 below, section 3(1) of the Local Government Act 1999 imposes a duty on Local Authorities to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. The implementation of actions associated with the audit findings and the Procurement Controls and Monitoring Plan would, amongst other things, assist the Council in performing the above duty as well as meeting its general fiduciary duty to the tax payer, to ensure effective utilisation and monitoring of its use of resources
- 6.2 The improvements noted in procurement controls supports the delivery of value for money, although it is noted that value for money is an holistic judgement on the Council's arrangements for economy, efficiency and effectiveness. This report notes the progress of the controls designed to improve the control environment relating to Council procurement activity.
- 6.3 The working group, which includes representatives from all directorates, will continue to meet to drive forward the: implementation of actions from the previous audit in April; continuation of working together to implement actions within the Procurement Controls and Monitoring Action Plan and 'centralisation' of procurement function.

**7. LEGAL ISSUES**

- 7.1 Section 3(1) of the Local Government Act 1999 imposes a duty on Local Authorities to 'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

- 7.2 The public procurement regulations apply whenever a contracting authority whether by itself, or through a third party, seeks offers in relation to a proposed public 'works' 'supply' or 'service' contract, the value of which exceeds certain financial thresholds. The public procurement regulations make a distinction between two categories of services. Schedule 3 to the Public Contract Regulations 2006 contains two lists of categories of services. The first list, which appears in Part A, contains description of services which are subject to the full application of the rules under the public procurement regulations. If a service in Part A exceeds the relevant threshold, it is subject to the full public procurement regulations, such as the obligation to subject the service to advertisement before an award of contract.

Only limited parts of the Regulations apply in the case of Part B services contracts and do not apply to service concessions or contracts that are below the relevant thresholds. Such contracts are nonetheless caught by general Treaty principles of equal treatment, non-discrimination and transparency.

With respect to contract award, the award decision must comply with procedural rules laid down at the outset and which comply with the general principles of non-discrimination and equal treatment.

## **8. CONSTITUTIONAL POWERS**

- 8.1 The Constitution Part 3 Responsibility for Functions section 2 allows the Audit Committee the ability to monitor the effective operation of risk management and corporate governance in the Council.

## **9. BACKGROUND INFORMATION**

- 9.1 The procurement Control and Monitoring action plan initially produced in response to the Internal Audit of CPT in June 2011 has been used as the basis for continuous improvement to procurement processes.
- 9.2 The plan demonstrates the key activities and continual improvements which have been made such as:
- a) Central Contract repository that hold details of contracts and reconciles with forward procurement plan
  - b) Use of procurement systems and tools to drive contract compliances and good procurement practices
  - c) Contract Management training for all staff who manage contracts within the Council
- 9.3 The Control and Monitoring action plan and Contract Procurement Rules were used as the basis for the Internal Audit in April 2012. A copy of recommendations and actions plan which formed appendix D of the April 2012 Internal Audit Report Contract Procurement Rules can be found attached (Appendix A). It set out the key findings, the corresponding actions and managers' responses. The attached

(Appendix A) also notes progress to date.

## **10. LIST OF BACKGROUND PAPERS**

10.1 None.

<b>Cleared by Finance (Officer's initials)</b>	MC
<b>Cleared by Legal (Officer's initials)</b>	POJ