

# **Review of Scottish Public Sector Procurement in Construction**

**October 2013**

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## Foreword

We are pleased to present our report on the findings of our review of Scottish public sector construction procurement.

A cornerstone of our report is our belief that as a nation we must make sure that we harness the power of public spending to benefit the sustainability of the Scottish economy to create and support jobs, as well as to provide the infrastructure which will keep Scotland working for generations to come. Our report contains a number of recommendations. Some of these are strategic in nature; others are very specific operational issues.

Annual Scottish public sector construction expenditure is around £4 billion. This is a vast sum, and the construction sector is a vitally important part of the Scottish economy. According to Construction Scotland, the 31,000 businesses that make up the industry in Scotland employ some 170,000 people<sup>1</sup>. Construction Scotland also says that for every £1 spent on construction output, a further £2.94 is generated in the economy.

Promoting the sustainability and development of the construction sector includes ensuring that small and medium sized enterprises (SMEs) are given the economic oxygen to allow them to thrive, and if desired, to grow and develop and become the larger companies of tomorrow, as well as having regard to the significance of the construction industry in all parts of the Scottish economy, including its remote and rural parts where SMEs are particularly important.

Of course, whilst two-thirds of employment in construction in Scotland is in small firms which employ fewer than 50 people, we fully recognise that the current economic conditions are creating problems for companies of all sizes. And of course, times are tough for the public sector, which has to maximise value for money, in order that limited funds can deliver as much as possible.

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<sup>1</sup> Building for the Future, The Scottish Construction Industry's Strategy 2013-2016, Construction Scotland

The two principles of achieving value for money and promoting the sustainability of the construction sector are not mutually exclusive, but current practices do need to be re-considered.

Some practices in public sector construction procurement, such as pre-qualification, are frequently over-elaborate and increase costs for both the public sector client and the private sector contractor. The public sector is rightly concerned to guard against the risk of challenge to the procurement process, but over lengthy documentation and processes can reduce transparency and have the opposite effect of what is intended by increasing costs for both parties, as well as the possibility of challenge. In the implementation of our recommendations, a guiding principle should be to seek to reduce costs by removing unnecessary procedures and simplifying the procurement process.

However, much of the construction procurement undertaken by the public sector is carried out by capable people well versed in how to procure good outcomes in an efficient and effective manner. In these cases we hope that our recommendations may encourage and enable the sharing of best practice.

Responsibility for the reform agenda does not rest solely with the public sector, and so some of our recommendations are addressed to the many companies and firms working for public authorities. The construction industry is characterised by contentious behaviours, and more collaboration with clients and within the supply chain is needed.

Our vision is of an approach which achieves better collaboration in design-led, efficient and effective public sector construction procurement and which has regard to sustainability in all senses of the word.

We record our grateful thanks to our excellent support team from the Scottish Government.

**ROBIN CRAWFORD**  
Chair

**KEN LEWANDOWSKI**  
Deputy Chair

# **1. Executive summary**

## **Terms of reference**

1.1.1 In October 2012, Scottish Ministers set the terms of reference for this report, which in summary are:

“To review the entire public sector and affordable housing sector construction procurement arrangements in Scotland and make recommendations to support improvements in efficiency, delivery and sustainability of construction procurement projects across the Scottish public sector...”

1.1.2 We have structured the report to reflect the issues raised with us and the actions we believe are required to achieve better procurement in public sector construction, but running throughout the report are a number of recurring themes which we believe, if adopted, will support better procurement. These themes are design-led outcome-focussed procurement, consideration of whole life cost at all stages, proportionality of the process to the size and risk of the contract, collaboration, simplification, sustainability and the balancing of risk between client and contractor.

## **Construction procurement in the public sector today**

1.1.3 In this report, we look at the whole process of construction from inception, including feasibility, design, construction, occupation and deconstruction, and – to the extent that it is affected by the original works - the ongoing management of the asset.

1.1.4 Many bodies are involved in construction using public monies. In formulating our recommendations, we have met with around 120 different stakeholders, and have convened consultative groups. We believe that most of our recommendations should be applicable to all, but where there are sector-specific considerations, we will make this clear.

## **Governance, accountability and leadership**

1.1.5 We believe that there is a need for clearer leadership to ensure that construction is properly planned using a design-led, whole of life cost approach.

1.1.6 There is significant potential to make construction more efficient by maximising opportunities for contracting authorities to collaborate and share best practice – particularly in the local government and social housing sectors.

1.1.7 We recommend a strengthening of the construction procurement policy function within the Scottish Government. We also believe that there is a role for a “Chief Construction Adviser”. With direct access to Ministers, this individual will champion the reform programme, work with industry and the public sector and act as a conduit between industry and Ministers.

1.1.8 Allocating lead responsibility for the implementation of each of our recommendations will be key to their success. We believe in broad terms that those which relate to policy should be the preserve of government, but that there is scope for those recommendations which relate more to the delivery of construction projects to be taken forward by other parties with relevant experience. Following the formal response to the report one of the immediate tasks for the Scottish Government will be to work with all key parties to determine a suitable division of responsibilities.

1.1.9 To make rapid progress we see a need for a mechanism to bring together the main spending authorities and industry. We envisage that this should report to the Public Procurement Reform Board within the existing governance structures for procurement reform, and would be led by the Chief Construction Adviser, or by some other independent figure with strong experience in construction or procurement, and credibility with industry and the public sector, until such time as the Chief Construction Adviser is appointed.

1.1.10 The existing Public Procurement Reform Programme, focussed mainly on goods and services, has made significant progress in improving procurement, driving efficiency, increasing transparency and standardisation of processes. We regard it as important to ensure that the implementation of our recommendations is carried out in a manner consistent with the existing programme.

## **Prioritisation and co-ordination of spending**

1.1.11 Public bodies use different methods of arriving at the prioritisation of their capital spend. We recommend that there should be a review of the methods of strategic prioritisation of construction spending across the public sector in Scotland to identify best practice.

1.1.12 There is also a need for better co-ordination of construction spending and consideration of potential synergies between projects and programmes.

## **Pipeline**

1.1.13 A consistent message from industry throughout this process is that having a firm idea of anticipated workloads is key to business confidence, and our recommendation is that each public body should annually publish a rolling forward pipeline of anticipated spending on construction. These pipelines should be collated and held together centrally.

## **Approach to market and importance of design**

1.1.14 How a procurement exercise is carried out has a direct link to the quality of the end product. Critical to this is getting the design thinking and the project brief right at the outset.

1.1.15 Comprehensive business planning, focusing on outcomes, should take place and will require earlier engagement among clients, users, designers and contractors.

1.1.16 From project conception to contract award, there should be a focus on the design quality and whole life cost of an asset.

1.1.17 Framework agreements are a key part of the procurement landscape and can be more efficient and encourage more productive longer-term relationships with suppliers. However, where possible, SMEs should always be given the opportunity to participate.

1.1.18 We have met all five hubCos, their Territory Partnering Boards and the Scottish Futures Trust (SFT). The hubCo model has clear potential; however we recommend that further guidelines should be developed about certain aspects of their operation, including continuation of the work to develop a solution to the delay in payment of design fees until financial close.

1.1.19 The UK Government is currently trialling three models of construction procurement – Two Stage Open Book, Cost Led Procurement; and Integrated Project Insurance and we recommend that the Scottish Government should monitor developments in these trials.

1.1.20 Apart from the selective addition of clauses to take account of the particulars of a project, any variations to standard forms of contract should be kept to a minimum.

1.1.21 The issue of prompt and fair payment to contractors and sub-contractors is one we feel very strongly about. Our early recommendation of a trial of Project Bank Accounts has already been accepted by Ministers. Our other recommendations include that contractual terms between client and main contractor should consistently outline fair payment terms for supply chain participants and that clients should ensure that appropriate resources are allocated to contract management and enforcement of terms and conditions of contract.

### **Capability and capacity – people and skills**

1.1.22 Many public sector organisations in Scotland have tremendous experience and expertise. A problem, however, is that this experience and expertise appears to vary significantly from one organisation to the next. We recommend that public bodies involved in construction must have access to the right mix of professionalism in procurement and construction. This can be achieved in different ways.

1.1.23 Some amendments are needed to the existing system of Procurement Capability Assessments (PCAs) to ensure they adequately cover the procurement and construction elements associated with infrastructure investment projects. All organisations procuring construction projects with public funding should be subject to PCAs.

1.1.24 We recommend that a baseline of current and required skills in construction procurement should be established, and a strategy developed to ensure those needs are met.

### **Capability and capacity – tools, systems and guidance**

1.1.25 Fear of challenge has in part led to procurement processes and costs which can be wholly disproportionate to the planned spend.

1.1.26 We recommend that new guidelines setting out best practice on the end-to-end construction procurement process are developed and maintained. These should be in an accessible digitised form akin to the “Procurement Journey” for goods and services and the existing Scottish Procurement Construction Manual should form the basis for this work. Specific issues on which further guidance should be developed include:

- Public bodies rightly assuring themselves of the competence and skills of bidders, but doing so in a proportionate and sensible way.
- To the extent possible within the full scope of the law, contracting authorities taking the prior performance and behaviour of bidders into account when awarding contracts.
- Restatement and development of existing guidance to the public sector on how to deal with abnormally low tenders.
- Design guidance - ensuring that design requirements and quality are considered early and followed through to the finished outcome.
- Always making feedback available to both successful and unsuccessful bidders.

### **Access to contracting opportunities**

1.1.27 If not already established, public sector procuring authorities should work together to develop forums with locally operating construction firms which would meet on a regular basis to discuss the pipeline of work, issues and opportunities, with a view to building greater understanding, transparency and improved outcomes.

1.1.28 We recognise the importance of ensuring appropriate access for SMEs to public construction contracts. We recommend that a support mechanism should be developed to help SME contractors and consultants understand how to compete for public contracts.

1.1.29 To ensure consistent sight of publicly funded construction contracts we believe that all projects which are advertised should be advertised on the Public Contracts Scotland (PCS) portal and the Scottish Government's proposed Procurement Reform Bill would require all works contracts worth at least £2 million and all supplies and services contracts worth at least £50,000 to be advertised on PCS. Contractors on major projects should also be encouraged to advertise sub-contracts on PCS where supply chains are not fully identified.

1.1.30 The Scottish Government should develop additional guidance for the public sector to ensure that the recently introduced standard pre-qualification questionnaire (PQQ) is used in a way which is proportionate and relevant to the needs of construction procurement, and monitor practices to ensure that this principle is achieved. The standard PQQ should continue to be refined and, where a pre-qualification stage is being used, its use should be mandated. The use of PCS Tender should be made mandatory for issuing Invitation to Tender (ITT) notices and awarding contracts – whether individual contracts or the establishment of frameworks.

1.1.31 Quick Quote currently operates as part of PCS Tender to allow the procurer to select a smaller number of suppliers to price the work they require. We recommend that public bodies should consider using Quick Quote for contracts under the amounts specified in the Procurement Reform Bill as requiring to be advertised on PCS. Public contracting authorities should, however, still satisfy themselves that they are being transparent and fair.

### **Sustainable procurement, innovation and emerging technologies**

1.1.32 Economic, environmental and social sustainability are interlinked and we see a future where these are systematically afforded appropriate priority in construction procurement decisions.

## **Social benefits**

1.1.33 Social benefits are commonly referred to as community benefits. We recommend that contracting authorities should have a clear strategic understanding of what they want community benefits to deliver through their public procurement; and that there should be guidance for contractors on how to design and deliver appropriate community benefit clauses.

## **Environmental sustainability**

1.1.34 Industry has a key role to play in improving on-site waste management practices, as have clients in demanding good performance.

1.1.35 Greater linkage of capital and revenue funding considerations, in the context of the whole-life cost of a project, would provide better information on the true overall cost of sustainable approaches by focussing on the subsequent savings in revenue expenditure as well as the upfront capital costs. Designing for environmental sustainability can reduce whole life costs.

## **Innovation and Design**

1.1.36 We would like to see the construction sector in Scotland coming together on a collaborative basis to promote design thinking, innovation and technological change, and we recommend that industry should work with the Scottish Government to promote modern methods of construction.

## **Building information modelling**

1.1.37 We recommend that the use of Building Information Modelling (BIM) should be introduced in central government with a view to encouraging its adoption across the entire public sector. The objective should be that, where appropriate, construction projects across the public sector in Scotland should adopt a BIM level 2 approach by April 2017.

## **Data as an enabler of reform**

1.1.38 There is currently a lack of comprehensive collated data for public sector construction spend in Scotland. Good quality data should be used as an enabler of reform both at a strategic and local delivery level.

1.1.39 This would be achieved through development of a comprehensive baseline position covering investment decisions, delivery parameters and contract spend in which the development of benchmarks and key metrics and the use of improved data to monitor, manage and improve performance can enable better-informed decision making and improved value for money. That learning can then be used across public sector construction to improve practice, out-turn and outcomes and reap full value from public investment.

### **What industry needs to do**

1.1.40 We believe that some of the problems and issues raised with us as we have spoken to stakeholders are, at least in part, of the industry's own making.

1.1.41 We believe that the newly formed Construction Scotland Industry Leadership Group has a role to play in addressing the challenges we envisage for industry.

1.1.42 We have made suggestions as to some of the steps which the public sector can take to improve payment down the supply chain but we recommend that the Fair Payment Charter should be promoted more widely as the "norm" within the construction industry and that the industry considers how it can collectively make late payment of suppliers an unacceptable practice.

1.1.43 There are a number of other areas for focus by industry which include:

- consideration of what is prompting 'suicide bids', and how to arrest them, so that the customer and the contractor get a fair deal;
- working with the public sector to develop best practice models for the delivery of community benefits, and a shared apprenticeship model;
- embracing a design-led approach, modern methods of construction and new and emerging technologies such as Building Information Modelling; and

- considering what industry-led training programmes currently exist for those bidding for public sector work, and whether there is scope for these to be co-ordinated and developed further.

### **Resource implications and potential savings**

1.1.44 Although we recommend that existing resources be used to the extent possible, more expert leadership in construction procurement will have cost implications as will, in the shorter term, the need for a change management team.

1.1.45 Audit Scotland attributed £327 million of savings, or four per cent of annual procurement spending, to the first two years of the procurement reform programme following John McClelland's 2006 report. It may be reasonable to expect that a proportionately similar level of saving should be achievable from the implementation of our recommendations as were achieved in the first stages of the wider Public Procurement Reform Programme, principally relating to goods and services. Assuming an identifiable annual construction spend of some £3.2 billion, as outlined in chapter 3, this would indicate savings of at least £120 million over the same timeframe.

1.1.46 Construction spending is different, however, and in addition, many of our recommendations speak to consideration of whole life costs. Taking account of the opportunities for savings in the initial capital spend set out in this report and the opportunities for savings over the whole life of the project, we hope that it will be possible to set targets for savings considerably in excess of the figure of £120 million, not just over the first stage of the construction procurement reform programme, but annually.

1.1.47 In the report we detail the areas in which savings should be sought. Further work is needed to understand and gather information on current spending and therefore the precise scope for savings. We recommend elsewhere that a baseline position be established for the current categories of spend and one of the early tasks should be to promote targets for savings following the gathering of this information. We have considered whether we should ourselves set a target, but the evidential base is currently lacking.

1.1.48 Whatever targets are set, it will be important for contracting authorities to report their spending and savings in a consistent manner in order that progress can be accurately measured.

1.1.49 For industry, we hope that the implementation of the recommendations of the report will lead to a better, more efficient approach which should allow a reduction in the initial costs of procurement of a project and the potential for savings in its delivery.

1.1.50 In appendix 4 we set out a summary of our recommendations, an implementation plan and timescales. We have sought to be detailed in our approach in order that due weight can be given to the many representations which we have received. We hope that the detail given in the report and the level of consensus which we believe we have achieved in the wide consultation preceding it will allow a rapid deployment of the necessary resources for its implementation. In the implementation of our recommendations, a guiding principle should be to seek to reduce costs by removing unnecessary procedures and simplifying the procurement process.

## 2. Terms of reference and method

2.1.1 In October 2012, Scottish Ministers set the terms of reference for this report, which are:

“To review the entire public sector and affordable housing sector construction procurement arrangements in Scotland and make recommendations to support improvements in efficiency, delivery and sustainability of construction procurement projects across the Scottish public sector and to ensure that Scotland’s public and affordable housing sectors make best use of both their and the industry’s resources.”

The full terms of reference are included in appendix 1.

2.1.2 We have carried out around 120 interviews with stakeholders, examined numerous submissions from individuals and federations and had support from government officials and Ministers. We also formed two consultative groups, one comprising representatives of the contracting industry (including some of the many trade and professional bodies) and representatives of the public sector client group and the other comprising only a grouping of public sector clients. The first of these groups met three times and the second group met twice. More detail is contained in appendix 5. We are very grateful for the time and careful thought given by all who have commented on the process.

2.1.3 We have also examined a wide range of reports which have been prepared in the past on public sector construction procurement reform including the work done by the Cabinet Office and Chief Construction Adviser in developing the UK Government’s approach<sup>2</sup>. We have used questionnaires to gather evidence on practices in some areas of spend including social housing and hubCos. We have met with those responsible for the construction procurement reform programme in England and Northern Ireland and have gathered evidence of some procedures in other jurisdictions.

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<sup>2</sup> Government Construction Strategy, Cabinet Office, May 2011

2.1.4 Although the current economic backcloth is leading to reductions in public spending, this report is not focussed within that context, but is intended to outline a series of measures which will be relevant whatever the economic climate.

2.1.5 This report is the next stage in the Scottish Government procurement reform process. In its preparation, we have had regard to the principles set out in the 2006 Review of Public Procurement in Scotland by John F. McClelland CBE<sup>3</sup> (the McClelland report) and to the structures and processes which it promoted. Where possible, we have sought to build on these structures and processes rather than recommend an altogether new approach.

2.1.6 We have sought to define all abbreviations where they are first used and, in addition, a glossary of abbreviations is included within the appendices.

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<sup>3</sup> John McClelland also reported on ICT infrastructure in the public sector in Scotland in 2011, but references in this report to the McClelland report are to his 2006 report

### **3. Construction in the public sector today**

3.1.1 There can be some confusion over what is meant by the term “construction”. In this report, we look at the whole life cycle process of an asset. This includes key stages such as inception, feasibility, design, construction, occupation and deconstruction. In addition, as required by our terms of reference, we have looked at the entirety of publicly funded infrastructure and construction spend.

3.1.2 But we recognise that for many parts of the public sector, a large part of their “construction” spending is not currently in putting up new buildings, or in laying new roads, but in the maintenance of existing assets. Whilst some of our recommendations are clearly only applicable to new builds, we believe that most of the recommendations are applicable also to those maintenance contracts which are deemed as works contracts by the Public Contracts (Scotland) Regulations 2012.

3.1.3 The majority of construction is not carried out or led by central government. Each sector is structured and funded differently, and this is reflected in the way in which they approach construction. We believe that most of our recommendations should be applicable across the board, but where there are sector-specific considerations, we make this clear. Appendix 3 offers an overview of the main spending sectors.

3.1.4 One such sector-specific acknowledgement is that the Scottish Government views Registered Social Landlords (RSLs) as “contracting authorities” as defined by the EU Procurement Directives and the Public Contracts (Scotland) Regulations 2012. We understand that this view is not shared by some parts of the sector itself. However, we are not able to resolve this question and, for the sake of this report, we have assumed that RSLs are “contracting authorities”, to which our recommendations will be relevant. Even if they were not “contracting authorities”, however, we suggest that there is merit in adopting many of our good practice recommendations.

3.1.5 Quantifying public sector spending on construction is not easy. We know from the procurement information hub that there was over £2.4 billion of spending on construction across the public sector in 2011-12<sup>4</sup> (including £1.4 billion spent by local authorities).

3.1.6 However, the procurement information hub does not currently capture spending by Scottish Water (whose total capital investment in 2011-12 amounted to £491 million).

3.1.7 Neither does it capture spending by registered social landlords. Grants from the Affordable Housing Supply Programme for purposes other than council house building (which we have assumed to be reflected in the local authority spending figures) amounted to some £303 million in 2011-12<sup>5</sup>.

3.1.8 With these two additions to the data from the procurement information hub, we have been able to identify around £3.2 billion of spending on infrastructure as Figure 1 illustrates.

3.1.9 We suspect, however, that the total figure is actually somewhat higher. The procurement information hub does not capture revenue-based capital expenditure through the non-profit distributing (NPD) model, for which there was no spend in 2011-12 but in 2013-14 there is an expected NPD spend of £185 million.

3.1.10 There is also a lack of consistency in reported spending from different sources. Capital returns provided to the Scottish Government by each of the 32 local authorities put total gross capital expenditure on new construction, conversions and enhancement to existing buildings by local government alone at £2.1 billion in 2011-12.

3.1.11 Furthermore, the level of grant funding to registered social landlords provided, on average, 38 per cent of the total cost of construction of new homes – implying that an additional £494 million of funding from other sources was also

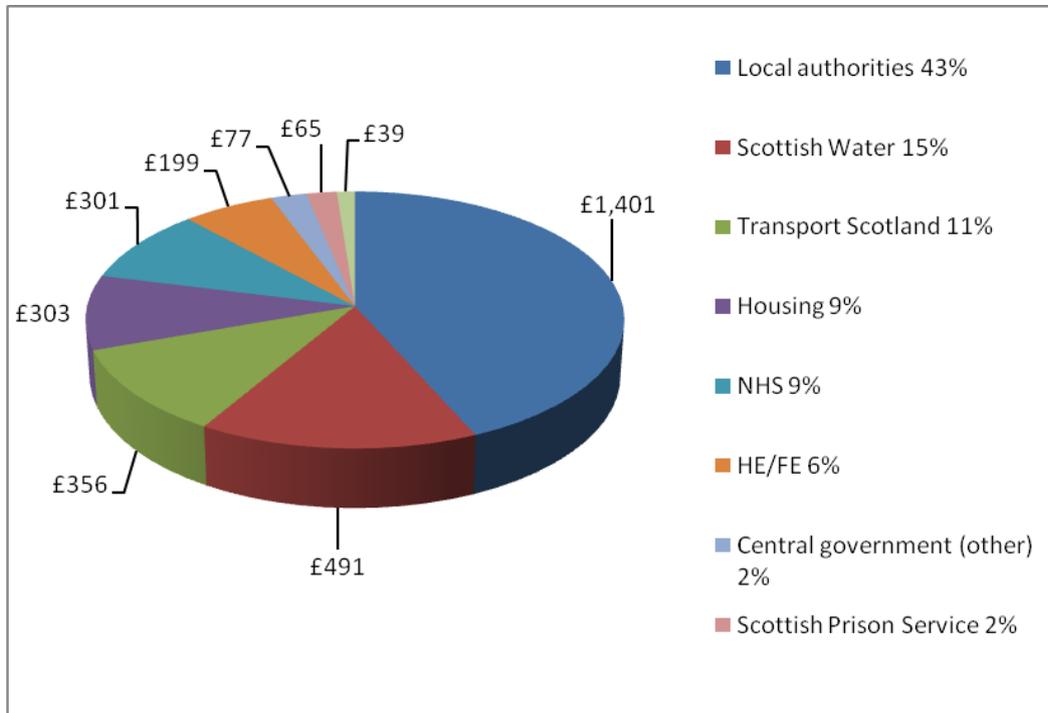
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<sup>4</sup> Spending recorded under the Proclass level one classification 'construction'

<sup>5</sup> Affordable Housing Supply Programme Out-turn Report 2011-12, Scottish Government

required. There is no central record of when this additional funding was leveraged, however, so we cannot be sure that this was all spent in 2011-12.

**Figure 1 : Identifiable spend in 2011-12 (£ million) – Totalling £3.232 billion<sup>6</sup>**



3.1.12 Taking all of this into account, we believe the actual level of publicly funded spending on construction to be in the region of £4 billion.

3.1.13 Chapter 9 of our report returns to the theme of the importance of data as an enabler of reform.

<sup>6</sup> Does not include revenue-financed capital spending. Figures taken from the Procurement Information Hub, except for Scottish Water (figure is the total capital investment reported in its 2011-12 annual report) and housing (figure is the total level of Affordable Housing Supply Programme grant funding for projects other than council house building, which spending we have assumed to be captured under the local authority data)

## **4. Governance, accountability and leadership**

### **4.1 Overview**

4.1.1 Within the Scottish Government and wider public sector, there are a number of individuals professionally qualified in construction disciplines and others whose remit includes construction, including staff in finance, procurement, legal services and business policy. In addition, substantial capability exists within organisations such as Health Facilities Scotland, the Scottish Futures Trust, Transport Scotland and the Scottish Prison Service, as examples. However, this expertise is not drawn together to provide leadership and guidance to Scottish public sector construction procurement as a whole.

4.1.2 At present, without such leadership and guidance, public bodies concerned with construction procurement have developed their own guidelines which can be inconsistent and at times over-elaborate, although there is also much evidence of good practice.

4.1.3 There is a need for:

- a focal point for policy guidance to enable a more coherent approach which is compliant with procurement law but does not build unnecessary costs for client and contractor;
- policy leadership to ensure that infrastructure is properly planned using a designed, whole of life cost approach; and
- guidance to ensure that the vast Scottish annual spend on construction is carried out in the most economically effective way and supports the sustainability of the Scottish economy to the extent possible within the boundaries of EU law.

4.1.4 There is also significant potential to make construction more efficient by maximising opportunities for contracting authorities to collaborate, and share best practice – particularly in the local government and social housing sectors.

4.1.5 Following the McClelland report, a number of centres of expertise have been established to provide leadership and co-ordination in the public procurement of goods and services, and the main parties are described in appendix 3. However, the McClelland report touched only briefly on construction, and the structures which have been established are mostly not designed to deal with the particular aspects of this activity.

## **4.2 Strengthening construction procurement policy leadership**

4.2.1 The implementation of our recommendations, and the development of policy relating to standards and best practice will require central co-ordination.

4.2.2 It is therefore our recommendation that there should be a strengthening of the construction procurement policy function within the Scottish Government to execute this role.

### **4.2.3 Recommendation:**

**The construction procurement policy function within the Scottish Government should be strengthened.**

4.2.4 This policy function should be under the clear control of a senior manager within the Scottish Government, and should be suitably resourced to set the policy for construction procurement in Scotland, to be a central source for advice and to drive the adoption of best practice across the public sector. A combination of the wide range of construction procurement undertaken by the public sector in Scotland and resource constraints may mean this is achieved to some extent by collaboration with, or secondments from, other departments and agencies. There are already a number of staff who deal with aspects of construction within the Scottish Government, and the strengthened policy function should draw on existing resources to the extent possible. However, it will need a suitable blend of procurement, design and construction skills, at an appropriate level of expertise, and this will require some recruitment.

4.2.5 Although we recommend that this capability and capacity should be strengthened within the Scottish Government, and it is clearly appropriate that government retains responsibility for developing policy, we recognise the delivery expertise which has been built up across the public sector, and as such, it may be appropriate for Scottish Ministers to commission work to support policy development from those other bodies with proven expertise. All parties will need to ensure that they work closely and in co-operation with each other to ensure that their activities and functions are complementary and co-ordinated, in a manner consistent with the wider Public Procurement Reform Programme, and within the bounds of policy set by the Scottish Government. There must be no duplication of effort, and there is no room for “turf wars”.

4.2.6 The Scottish Government senior manager charged with strengthening its construction procurement policy should be required to ensure that stronger links are forged amongst the various parts of the Scottish Government and the wider public sector with an interest in construction as that policy is developed and implemented. It will be important to ensure that existing public procurement strategy, policy and systems fully accommodate and integrate construction and goods and services procurement across the public sector.

4.2.7 A number of public sector bodies deal with highly specialised aspects of infrastructure procurement and we have seen many examples of good practice. It is not intended that the Scottish Government should supplant or replicate this specialist knowledge. However, a more cohesive approach will require liaison with such specialist teams in order to ensure that the principles of good practice set out in this report are fully adopted across the public sector. One of the roles of the Scottish Government should be to identify and enable the sharing of such approaches. Short-term secondments from specialist bodies would be an excellent way of ensuring that best practice is garnered and shared.

### **4.3 Responsibility for implementing recommendations**

4.3.1 In order for the measures which we outline in this report to succeed, we believe that it will be important to set out clearly who is responsible for taking forward them forward. In some cases, the recommendation itself makes such a decision obvious. As regards most of the recommendations, however, arguments can be made for a variety of different ways of allocating lead responsibility.

4.3.2 In general terms, we believe that policy should be the preserve of central government, but there is clearly scope for some of our recommendations, which relate more to the delivery of construction projects, to be taken forward by other parties with relevant experience.

4.3.3 We have not sought to draw that distinction in our report. Partly, this is because the distinction between policy and delivery is not always absolute. It is also important, however, that those who are charged with taking our recommendations forward are 'bought-in' to doing so.

4.3.4 Accordingly, one of the first tasks which will need to be undertaken immediately by the strengthened policy resource within the Scottish Government will be to work with all key parties to determine a suitable division of responsibilities.

#### **4.3.5 Recommendation:**

**As a matter of priority, the strengthened construction procurement policy function within the Scottish Government should, in collaboration with other bodies key to the implementation of our recommendations, determine lead responsibility for delivering each recommendation.**

### **4.4 Chief Construction Adviser**

4.4.1 Our recommendation is that the construction procurement policy function within the Scottish Government should be strengthened. However, we also believe that there is a role for an independent champion of reform.

4.4.2 This will be a senior figure who has credibility with the public sector, with the industry and with Ministers. With direct access to Ministers, the task of this individual will be to champion the reform programme and identify and seek to eliminate slippages in the timetable for its implementation. The role will include working with industry on those aspects of the programme which are the responsibility of the industry and acting as a conduit between industry and Ministers.

4.4.3 **Recommendation:**

**A Chief Construction Adviser (CCA) should be directly appointed by the Scottish Government**

4.4.4 This would be an empowered role and the tasks of the CCA would be to:

- Champion the implementation of this report by challenging both the public sector and industry on pace and progress;
- Challenge industry to modernise and innovate its processes, practices and relationships;
- Be a supportive, enabling, but challenging partner of the Scottish Government; and
- Be a conduit for industry to raise strategic or policy concerns or to approach Ministers.

4.4.5 It is not intended or envisaged that the role of the CCA will be to allow the bypassing of commercial procedures for resolving disputes between industry and clients. Such disputes should be handled through the normal channels for dispute resolution.

4.4.6 The role of the CCA is likely to be a fixed-term appointment, capable of being refreshed and reviewed. We envisage that the appointee would be directly accountable to and have direct access to Ministers. While the individual must have strong expertise in construction and procurement, leadership strengths are likely to be equally crucial.

4.4.7 The CCA should be a member of the Public Procurement Reform Board (PPRB), which is discussed further later in this chapter.

## **4.5 Relationship to the wider procurement reform programme**

4.5.1 We are conscious that there are already a number of working groups involved with the procurement reform agenda and have considered whether it is desirable to add construction to their remit. The principal groups driving the current procurement reform agenda are the PPRB and the Procurement Reform Delivery Group (PRDG).

4.5.2 Chaired by the Deputy First Minister, the PPRB's purpose is to provide strategic direction and support and monitor progress on the procurement reform agenda. Under its direction, the existing Public Procurement Reform Programme, focused mainly on goods and services, has made significant progress in improving procurement, driving efficiency, increasing transparency and standardisation of processes. As such, we believe the PPRB should be ultimately responsible for the success of the construction procurement reform programme.

4.5.3 The PRDG takes direction from the PPRB and reports to and provides assurance to the Board on the implementation of the reform agenda. It is responsible for ensuring that the reform programme remains on course to deliver benefits, and that obstacles to delivery and benefits realisation are removed or reduced. It collectively owns the existing reform delivery plan, and it leads, drives and facilitates the work to develop collaborative national and sectoral approaches to procurement across the public sector in Scotland. Membership of the Group includes the heads of the national and sectoral procurement centres of expertise.

4.5.4 The agenda of the PRDG is already full and its composition does not include any substantial construction focus. To make rapid progress with the construction procurement reform agenda, we believe there is a need for a mechanism to bring together the main spending authorities and industry. We envisage that this should report to the PPRB within existing governance structures for procurement reform.

### **4.5.5 Recommendation:**

**A mechanism should be established under the existing Public Procurement Reform Programme to bring together key stakeholders to drive the procurement reform agenda as it relates to construction.**

4.5.6 The purpose will be to provide a strategic forum for discussion of implementation issues and agreement of joint plans of action. The focus should very much be on the strategic, rather than the operational.

4.5.7 Representation should be drawn from leadership levels across both industry and relevant parts of the public sector, including, but not exclusively, the main spending authorities. It may also be appropriate to include some representation from those who have responsibility for driving employment and sustainability policies. Clearly, some commercially sensitive agenda items may need to be discussed with only the public sector representatives present.

4.5.8 Members of such a grouping should be fully empowered to speak and act on behalf of their sector. In some sectors in particular, such as local authorities and industry, achieving this will in itself require some effort and co-ordination.

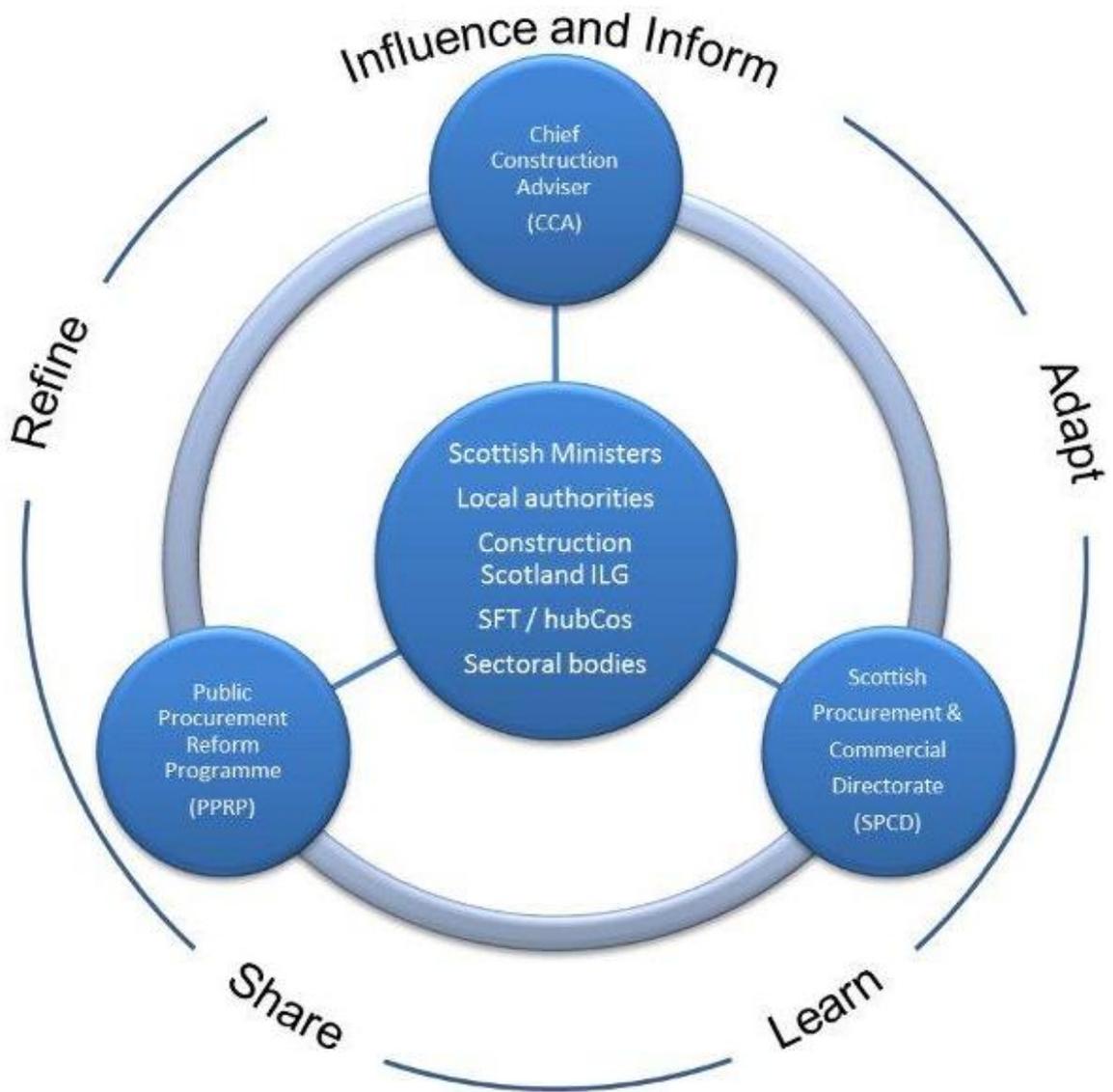
4.5.9 Our vision is that the CCA will lead this grouping, or that some other independent figure with strong experience in construction or procurement, and credibility with industry and the public sector, should lead it until the CCA is appointed.

4.5.10 One of the CCA's roles will be to challenge and to liaise with industry and we recommend that industry should be represented in this grouping. In chapter 10 we comment directly on the industry role in relation to the reform agenda. The Construction Scotland Industry Leadership Group has recently been formed and it provides an obvious vehicle for leadership engagement with industry. However, further thought may need to be given to the composition of this new group to enable it to carry out such a task.

## **4.6 Fitting the pieces together**

4.6.1 The structure we envisage for implementing our recommendations and providing leadership thus comprises three parts. The first is to establish the role and reporting relationships amongst the Scottish Government and other key parties to the reform programme, maximising synergies with wider public procurement strategy, policy and systems; the second is the appointment of a Chief Construction Adviser; and the third is a mechanism to bring together the key spending authorities and industry. A fourth part could be regarded as the leadership within the construction industry itself.

4.6.2 In summary, our recommendation is that Scottish Government should own policy, advice and guidance; that work should maximise synergies with wider public procurement reform; that the Scottish Government should collaborate and commission work from those internal areas with relevant expertise, such as the Health Directorate's Capitals and Facilities Division, and other bodies, including SFT, to assist on delivery aspects. The role of the CCA is to champion the reform programme and to challenge the government, wider public sector and industry on pace and progress. A mechanism is needed to bring together the disparate parts of the public sector involved with infrastructure procurement and the industry to provide a forum for debating implementation issues and for driving the reform agenda, within the existing governance structures of the procurement reform programme. The linkages of our suggested approach can be illustrated in the following diagram:



## **5. Prioritisation and co-ordination of spending**

### **5.1 Overview**

5.1.1 This report contains many recommendations designed to address the strengthening of the procurement process. But we believe that it is important also to consider wider strategic aspects of the procurement of infrastructure in Scotland.

5.1.2 There are dangers in a silo approach which looks at demand only from the perspective of the individual authority. There is a need for more co-ordination to ensure that opportunities to achieve synergies are not missed.

5.1.3 Elsewhere in the report, we have commented on the need to start any procurement with a proper plan focussing on the desired outcomes. There is also a need to ensure that spend is prioritised and co-ordinated properly amongst the numerous authorities concerned with infrastructure procurement and in this chapter we bring forward a number of recommendations which are designed to build on the best practice which presently exists.

5.1.4 Our vision is of an improved approach to the prioritisation of spend and greater co-ordination amongst authorities, agencies and directorates.

### **5.2 Prioritisation of spend**

5.2.1 One of the roles of the Scottish Government Infrastructure Investment Board (IIB) is to provide advice to Ministers about capital investment priorities. Priorities are set using the following four criteria, which are explained in the Scottish Infrastructure Investment Plan 2011 (IIP), and have much similarity with the aims and vision flowing from this review:

- Delivering sustainable economic growth
- Managing the transition to a low carbon economy
- Supporting delivery of efficient and high quality public services
- Supporting employment and opportunity across Scotland

5.2.2 Individual public bodies have their own models for evaluating and ranking projects. These are mainly based on the Treasury Green Book.<sup>7</sup> A good example is Transport Scotland's model.<sup>8</sup>

5.2.3 However, we believe that there are opportunities for comparing the different methods used and identifying best practice, while recognising that specialised public bodies will have elements which are particular to their needs and that a pure financial appraisal has its limitations, particularly when dealing with socio-economic and environmental factors. Identifying and promoting common practice in prioritisation should assist the task of prioritisation of limited funds across the public sector in setting capital budgets, although we recognise that ultimately an overview has to be taken which cannot be informed by formulaic methods alone.

5.2.4 Audit Scotland recommended in 2011 that the Scottish Government should develop an overarching investment strategy which would help provide key information for prioritising and planning<sup>9</sup>. The IIB and IIP currently address these issues, although we believe there may be some scope to develop further that role.

#### 5.2.5 **Recommendation**

**There should be a review of the methods of strategic prioritisation and co-ordination of construction spending across the public sector in Scotland – to identify best practice and to ensure that investment decisions are informed by the use of appropriate techniques.**

5.2.6 We believe that, in implementing this recommendation, the IIB should instruct investigation of the different methods of project prioritisation used by government to identify best practice including the use of economic appraisal tools, such as those which examine Gross Value Added (GVA), whilst the Convention of Scottish Local Authorities and the Society of Local Authority Chief Executives should determine the scope for introducing equivalent best practice recommendations to councils.

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<sup>7</sup> The Green Book: appraisal and evaluation in central government

<sup>8</sup> Any transport project which needs Scottish Government approval or funding is appraised using the Scottish Transport Appraisal Guidance (STAG)

<sup>9</sup> Management of the Scottish Government's capital investment programme, Audit Scotland, January 2011

### **5.3 Construction Pipeline**

5.3.1 A consistent message from industry throughout this review process has been that having a firm idea of anticipated workloads is key to business confidence. This allows industry to recruit appropriately, to commit to apprenticeships and training, and to invest in capital resources. It also allows industry to provide a more efficient response to procurement, supporting suppliers to make early business decisions and allowing the development of integrated teams. Indeed, this was also one of the key messages as far back as the Egan Report<sup>10</sup>.

5.3.2 One of the ways this can be achieved is by publishing a clear statement, or pipeline, of what the public sector intends to procure over the coming years.

5.3.3 There is currently some published detail on the forward pipeline of work across the public sector. The Scottish Government's Infrastructure Investment Plan (IIP) was first published in 2008, and set out the infrastructure projects, with a capital value greater than £5 million, which the Scottish Government and its partners were proposing to undertake over the following ten years (though that period varied in some sectors). The IIP was updated in 2011, including additional information on the financing, delivery and strategic links of each project in the pipeline as an annex. That annex is now regularly updated and published on the Scottish Government website. This is to be applauded. The Scottish Government has recognised the issue, and has taken steps to address it. But the coverage offered by this pipeline should be extended to capture projects being led by other public sector bodies and also to provide greater detail and certainty around the status of these pipeline projects.

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<sup>10</sup> Rethinking Construction: The Report of the Construction Task Force, 1998

5.3.4 There is already some sectoral information in the public domain, such as is published by the Scottish Futures Trust<sup>11</sup>, and in individual authorities' pipelines. So the first step to improve data collection is a relatively simple job of bringing together existing information into one place and one format. That is not enough on its own, however. For the pipeline to be of real value, the coverage also needs to be deepened to give more detail on projects – where they are in the business planning process, what hurdles are still to be overcome, what the anticipated approach to market is, and so forth.

5.3.5 This suggestion has received mixed responses from participants in our review. Almost everyone agrees that it is a good idea in theory. Some public bodies, however, have maintained that it would be impossible for them to provide this information because of the shorter-term way in which their funding is allocated.

5.3.6 We have some sympathy with the argument that short-term funding is not conducive to effective long-term planning, although that is beyond the terms of reference for our review. However, we do not accept that it follows that such pipeline information cannot be provided. Even if funding is not yet confirmed, it is perfectly reasonable to expect a well-managed organisation to know what capital works it intends to carry out over the coming years, given a range of funding scenarios, and to be able to articulate this in a manner which sets out the assumptions on which those projects are dependent.

5.3.7 We believe that it is in everyone's best interests to make as much information available as possible, and to be as open as possible about the status of plans for any given project. This will mean that published plans change. This is the crux of public sector concern – a fear of criticism arising from projects that are listed not proceeding. But the industry must play its part, too. Industry is pushing for this information, and if the public sector is to make it available, industry and its representatives must not only accept the risk that it is subject to change, but also recognise the danger that unreasonable criticism of such change would likely reduce that information flow. Some flexibility in the pipeline plan process has to be expected.

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<sup>11</sup> Pipeline of Revenue Funded Projects, NPD and hub, April 2013

### 5.3.8 Recommendation:

**Each public body should publish annually a rolling pipeline plan of anticipated spending on construction, setting out detailed known information on timescales for pre and post-contract award including any planned phasing, the anticipated approach to market, the status of required consents, the funding model being used and whether formally approved by their governing body. These pipeline plans should be collated and held together centrally, and should initially contain all anticipated work above a value of £4 million over the next two years, with a clear plan put in place to extend this to cover at least work worth £2 million or more, and a timeframe of at least three years.**

## 5.4 Co-ordination of projects and programmes

5.4.1 Large-scale infrastructure projects are under the control of different public bodies. It is important, when major<sup>12</sup> projects are being contemplated, that sufficient linkages are made amongst these bodies to determine if it might be possible to achieve synergies. An example might be a major road project where water or telecommunications infrastructure opportunities may be identified in co-ordination with the road project thus potentially achieving a more cost effective outcome for the public sector as a whole.

5.4.2 In addition it is important to ensure that major projects are brought to market on a staged basis so as not to flood the market and risk inflating prices or creating artificial skills shortages. Such an approach will help the sustainability of the Scottish construction sector by promoting a more even flow of work. Audit Scotland said in 2008:

“there is a case for additional leadership and more deliberate co-ordination and management of the investment programme across government to ensure that it matches market capacity and capability.”<sup>13</sup>

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<sup>12</sup> We intend ‘major’ projects to be those which are defined as such by the Procurement Reform Bill when, as expected, it becomes law. We understand that current proposals are that this will mean all projects worth more than £4 million.

<sup>13</sup> Audit Scotland “ Review of Major Capital Projects in Scotland” June 2008

5.4.3 And as relates to major projects, the IIB has taken steps to strengthen the governance and oversight of the capital programme

5.4.4 But this principle of co-ordination of spend may also be equally relevant to smaller projects; for example a health centre allied with a new school or a community facility. Other scope for collaboration may be identified. It follows that, at the planning stage of any public sector construction project, consideration should be given to opportunities for synergies with other projects and our recommendations on pipeline will assist in enabling the identification of such opportunities. We recognise that much good work is now being done in this area by the territory partnering boards working with the hubCos (see section 6.4).

5.4.5 Audit Scotland recommended further in 2013 that councils should:

“actively look for opportunities for joint working with other councils, community planning partnerships and public bodies to improve the efficiency of their capital programmes. This should cover joint projects, sharing resources such as facilities and staff, sharing good practice and taking part in joint procurement.”<sup>14</sup>

5.4.6 **Recommendation:**

**Public sector bodies involved in construction projects should be able to demonstrate that sufficient linkages are made between them. This should include consideration of appropriate opportunities for collaboration and for synergies with other programmes of work in the planning phase of all infrastructure spend.**

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<sup>14</sup> Audit Scotland “Major capital investment in councils” March 2013

## **5.5 Regional strategic co-ordination**

5.5.1 Local authorities in Glasgow and the West of Scotland are in talks about pooling funds for major infrastructure projects to enable a more coherent regional prioritisation of spend. This is following a model already established in England and Wales, where around six cities are understood to have established such schemes with surrounding authorities with many further arrangements in the UK (including Glasgow and the West of Scotland) in planning.

5.5.2 The collaboration in Glasgow and the West of Scotland may provide an exemplar for co-operation in infrastructure spend in the other main city areas of Scotland.

### **5.5.3 Recommendation:**

**Regional co-ordination of infrastructure spend should be considered by councils across Scotland.**

5.5.4 As discussed at 5.4.4, the structure of Territory Partnering Boards and hubCos is providing a further valuable opportunity for collaboration and co-ordination. The Scottish Cities Alliance is also exploring further options for cities and their regions to develop pooled infrastructure investment funds.

## 5.6 Social Housing

5.6.1 A specific example of potential sectoral improvement of co-ordination is the social housing sector. There are some 40-50 housing associations in Scotland actively engaged in development work at any given time, as well as 23 local authorities building new council houses. A number of collaborative arrangements are in place and have been entered into in the past to achieve synergies in the procurement of new build with varying degrees of success. We believe that more co-ordination and co-operation within and between the RSL and local authority sectors is needed to help achieve improved prioritisation and cope with the current budget pressures and, along with the Scottish Government Housing Supply Division as the grant provider, that local authorities are well placed to help achieve this due to the strategic role they play in developing Strategic Local Programmes (SLPs) for affordable housing in their areas.

### 5.6.2 Recommendation:

**Current Scottish Government Affordable Housing Supply programme arrangements provide for an enhanced role for local authorities in programme planning and prioritisation. Alongside Scottish Government, local authorities should therefore play a key role in helping to inform and influence procurement choices and delivery of local authority and RSL affordable housing supply in their areas, as well as looking more widely at potential synergies with neighbouring authorities.**

5.6.3 In implementing this recommendation, new, more effective forms of collaboration in procuring affordable housing should be piloted in a small number of areas, to build on existing good practice whilst learning from previous partnerships. Pilots should set realistic expectations of outcomes, and engage local authorities and RSLs effectively.

5.6.4 Supplementary guidance should be developed by Scottish Government Housing Supply Division covering procurement choices and delivery options which local authorities should consider for the affordable housing programmes in their areas and discuss and agree as part of the SLP process.

5.6.5 Local authorities should take an interest in the work that is done to assess procurement capability and capacity and use this information to help inform their procurement choices for their SLPs.

## **6. Approach to market**

### **6.1 Overview**

6.1.1 How a procurement exercise is carried out – the approach to market, the contract terms and conditions, and the management of the project – has a direct link to the quality of the end product.

6.1.2 In this chapter, we examine some commonplace practices. Our recommendations in this area are designed to ensure that the importance of the way in which a project is procured is recognised both in terms of its impact on project delivery and on the economic wellbeing and sustainability of the marketplace.

6.1.3 Our vision is for a fair and transparent approach to contracting and to the allocation of risk.

6.1.4 There are many different ways in which a project can come to market. These each have their own advantages and disadvantages. We deliberately do not attempt to say that there is one ‘right’ way to take a project to market. There are however, some very wrong ways.

6.1.5 What needs to improve is the understanding of the risks and opportunities associated with different approaches, and the consideration which underpins a decision to follow any particular path.

6.1.6 Successful implementation of the recommendations in this chapter will depend to a very large degree on the capability and capacity of the people and systems (such as for pre-qualification) which are used. These elements are dealt with in detail in chapter 7.

### **6.2 The importance of design**

#### **Defining the project**

6.2.1 At the risk of being accused of stating the obvious, it is important that before buying something, you should know what it is you want to buy – or perhaps more accurately, what purpose you want it to serve. In practical terms for construction, that means getting the business plan and design brief right.

6.2.2 And yet, however obvious it may be, we are certainly not the first to have felt the need to say it in relation to public sector procurement of construction. As recently as June 2013, the Scottish Government’s architecture policy articulated this very point:

“Design should be considered at the very outset of public procurement projects. It is an essential part of achieving value for money, by ensuring capital costs are competitive and that savings can be achieved on running costs without compromising the quality of the design. Getting the brief right up front can deliver long-term value.”<sup>15</sup>

6.2.3 We have also received a striking number of comments throughout this process indicating that not enough time or attention is being given to this pre-market stage. As one stakeholder told us:

“The most common failure of construction projects occurs right at the start of the project. For public sector clients, the briefing stage is generally not fully understood and, without detailed advice and support from construction professionals, projects are doomed before a blow is struck”.

6.2.4 Other studies have highlighted this. Audit Scotland in 2008 found some projects without an authoritative business case and concluded that there was scope to increase the quality of project appraisals generally<sup>16</sup>. In 2011, out of a sample of 55 projects, it found continuing evidence of gaps in the availability of time and cost information at initial approval stage for a number of the projects examined<sup>17</sup>. It found similar conclusions in relation to local authorities in a 2013 report<sup>18</sup>. In that report, Audit Scotland also found that many councils do not have established processes for developing and using business cases.

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<sup>15</sup> Creating Places: A policy statement on architecture and place for Scotland, Scottish Government, 2013

<sup>16</sup> Review of major capital projects in Scotland; How government works, Audit Scotland, 2008

<sup>17</sup> Management of the Scottish Government’s capital investment programme, Audit Scotland 2011

<sup>18</sup> Major capital investment in councils, Audit Scotland, 2013

6.2.5 This can cause a number of problems. The most obvious of which is that it increases the risk of cost overruns in the construction itself. Indeed, Audit Scotland said in 2008:

“There needs to be clarity about the overall value and purpose of the project, its contribution to business goals and the optimum balance of cost, benefit and risk for its effective delivery. Inaccurate cost and time estimates at this stage undermine effective appraisal and value for money... Once a contract is agreed, significant changes to a project are likely to be costly and disruptive, and may not represent value for money”.

6.2.6 The critical nature of defining the project scope and brief is well acknowledged. In this chapter we look at some of the key elements that underpin a successful brief. All of this work should lead to a proper business plan for the project giving a good estimate of quality, time scales and likely cost.

### **Design-led procurement**

6.2.7 We have written about our vision for an approach which achieves better collaboration in design-led, efficient and effective public sector construction procurement and which has regard to sustainability in all senses of the word.

6.2.8 By ‘design-led’ procurement, we mean a procurement process in which it is recognised that a consistent focus on achieving high quality in design processes and outcomes can potentially deliver a very significant range of benefits. These can include reduced capital, maintenance and lifetime running costs, increased functionality and efficiencies in service delivery, flexibility and better environmental performance as well as greater user satisfaction and a positive impact on communities.

6.2.9 Design-led projects are often assumed to be more costly, focussed on unnecessary quality or more complex in construction. In fact, a good design-led project begins by fully considering the needs of users and future users, and employs innovation and careful judgment to deliver the best product within budget. This ensures that buildings are not only fit for purpose, but future-proof. Furthermore, good design methods can facilitate the closer collaboration between procurers, suppliers and end users, before solutions are specified, which ensures that proposals are fully tested, and meet users' needs.

6.2.10 Design-led procurement requires that proper value is given to the quality of design proposals at tender analysis stage and that design is afforded proper consideration throughout the delivery period. Design costs often account for a fraction of the long-term project costs, but design can often have the biggest impact on efficiency, sustainability and overall success.

6.2.11 Indeed, the relationship between good design and controlling costs is long established. In 1998, the Property Advisers to the Civil Estate said that:

“Professional fees might... represent 1 or 2 per cent of the life cycle cost. Therefore the relatively minor additional cost of procuring higher quality services, in particular design services which focus on optimising the balance between capital cost and maintenance costs, will be far outweighed by long-term savings.”<sup>19</sup>

6.2.12 Much more recently, a study of a primary care design project published in September 2013<sup>20</sup>, found that innovative design allowed a sizeable reduction in the gross internal floor area required, whilst importantly gaining the confidence of stakeholders in the design. This reduced the construction costs alone by more than 22 times the design fee to stage C.<sup>21</sup>

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<sup>19</sup> Guide to the appointment of consultants and contractors, Property Advisers to the Civil Estate, 1998

<sup>20</sup> Quality and Efficiency, value for money lessons and performance measures from the primary care reference design project, Architecture and Design Scotland and Scottish Futures Trust, 2013

<sup>21</sup> In the Royal Institute of British Architects' Plan of Work, 'stage C' is the concept stage of design

6.2.13 But quite apart from the risk of cost overruns, inadequate design briefs also increase the risk that the end product will not adequately do the intended job.

6.2.14 The very best design briefs are developed in a way which involves the end users of the facility from the outset. End users in this context mean not only those who will occupy a building, or use a facility, but crucially also those who will maintain it.

6.2.15 For all but the most specialist of projects, those design briefs should also be outcome-based. In other words, a brief should set out what activity the facility should support, rather than specifying in great detail how this should be achieved. This then gives design teams greater scope for innovation.

6.2.16 Importantly, defining not only what the criteria are, but what success looks like, in language which is easy to understand, makes it easier for designers to come up with workable designs, and for the client to assess their worth.

6.2.17 Architecture and Design Scotland and Health Facilities Scotland currently work with the NHS to develop such design briefs – known as SCIM (Scottish Capital Investment Manual) Design Statements – for health infrastructure projects and monitor the progress of the project against these aims and healthcare design guidance. These design statements are required as part of the business case process by the Scottish Capital Investment Manual used by the NHS. We believe that there is much that other parts of the public sector can learn from this work.

## CASE STUDY: ROYAL EDINBURGH HOSPITAL CAMPUS: MENTAL HEALTH SERVICES DESIGN STATEMENT

Architecture and Design Scotland supported NHS Lothian to form a SCIM Design Statement for the re-development of mental health services at the Royal Edinburgh Hospital.

The project team consulted with key managers at the hospital, clinical staff, the hospital's patients' council, as well as others, such as local advocacy groups for users of mental health services.

From that consultation process, a set of 'non-negotiables' for patients, staff, visitors, and for alignment to wider policy objectives was agreed. For each agreed 'non-negotiable', a series of benchmarks was also agreed. These set out the criteria which must be met, or gave views (written or pictorial) of what success might look like.

For example, one 'non-negotiable' for patients related to the ward layout:

"The wards must be welcoming and friendly. The layout should encourage interaction between patients and staff such that it feels like 'help is always at hand'.

The wards must offer attractive and therapeutic environments and encourage free, easy use and movement. The design and layout of these spaces must ensure that all parties feel safe and that the activities in one area do not negatively impact on those in another".

The accompanying benchmarks for successful design to meet this criterion are that:

- Staff working spaces should be, primarily, in patient areas, with limited use of private offices and 'staff only' areas.
- On entering the ward there should be an immediate welcome.

- The spaces and routes within the ward should not feel unduly clinical, with soft furnishings, colour, art and natural light being used to enhance the therapeutic environment.
- Although private areas (such as bedrooms) need to be a step away from public circulation, they must not feel distant from help. They should be relatively close to a social, shared area where staff and patients mix.
- There should be good sound attenuation between rooms.
- There should be no spaces where one might feel 'cornered'.
- Endless corridors with closed doors are not wanted. Patients need to be able to find staff easily (with a photo provided of an example of a design to be avoided).

The design of this facility is still in progress. However, we are told that the clear focus that this briefing and assessment process brings to the project is seeing ongoing improvements in the quality of the proposition being developed.

## **Design and build**

6.2.18 Of course, there are some specific considerations if a project is being delivered under a 'design and build' contract. The advantages of design and build to the public sector are clear – it is in some ways a simpler undertaking for the contracting authority and achieves relative certainty about price, as design risks are by definition passed to the contractor. This can be a positive outcome for both parties.

6.2.19 That is not necessarily always the case, however. Several stakeholders have emphasised the need for design and build to be used both appropriately, and competently. As one interviewee summed up:

“There are occasions when design and build is perfectly sensible. But the more complex the project, the less likely it is you'll get a solution through design and build which meets the client's requirements. Design and build contractors are good at putting up buildings, they are not so good at understanding the core business of the client... who needs to articulate very

clearly what the required standards are, and then monitor their delivery, otherwise the design and build contractor's motivation is least cost".

6.2.20 Or, as one industry representative put it:

"The problems with design and build often come from a lack of brief from the client – you end up with design-as-you-build".

6.2.21 So, whilst design and build may be an attractive model for some clients, a contracting authority using design and build to deliver projects still needs to be an intelligent client. It still needs to have done the due diligence to understand its own requirements and to be able to articulate these in clear briefs. One stakeholder went so far as to say that:

"This form of contract likely needs stronger design skills in house (in comparison to a traditional procurement where the client has a direct relationship with an architect to assist them in this) in order to better brief for design and ensure the most appropriate design is being developed. Clients without any in-house design skills can lack the knowledge and confidence to appropriately direct the design outcomes."

6.2.22 The client also still needs to have sufficient knowledge of the marketplace to understand the 'right' price it should be paying, and have sound project management skills to ensure the project progresses as it should.

### **Pre-market engagement with industry**

6.2.23 Once the client has determined what it needs from its intended facility, the next step is to determine how this can best be delivered.

6.2.24 It is important that the procurement strategy is developed in such a way that it allows the client to get the best product possible and the best value for money. This could be by taking advantage of emerging technologies, for example – or by ensuring that work is split into lots which are of suitable sizes to allow firms to put together competitive bids. It may even be the case that a particular need could be

fulfilled by the use of an existing standard design – tailored, as appropriate, to the specifics of the case.

6.2.25 There can be clear advantages in involving potential contractors in this discussion – they are often the parties with the key market intelligence.

6.2.26 And yet, this sort of strategic pre-market engagement happens all too rarely in construction. Sometimes, this is because of a perceived risk that it might put contractors in an advantageous position. We have found some good examples of it in practice, however – such as in the creation of the recent national biomass energy supply agreements, and in the way in which minor works are awarded from that same agreement – which demonstrate that pre-market engagement is possible and can deliver significant benefits.

## CASE STUDY: BIOMASS ENERGY SUPPLY AGREEMENTS

A national framework agreement, providing for the design, build and operation of renewable heat installations was awarded by Scottish Procurement, on behalf of the public sector, early in 2013. It is noteworthy for two main points of engagement with industry which underpin it.

Firstly, before even advertising the framework, open invitations to a number of workshops across Scotland were extended to both potential suppliers and potential clients, during which participants were invited to discuss the likely requirements, their experiences of similar projects, and suggest points for the contracting team to consider.

These discussions, around issues such as competing standards, in turn informed the development of the procurement strategy, so that when the contract was advertised, Scottish Procurement was confident of being able to attract competitive bids which would both meet public sector requirements, and promote market consistency and growth.

Secondly, the procedure for using this framework is unusual, in that it specifically includes a 'pre-commercial' stage. A client's initial scoping and draft project brief is shared with all of the framework service providers, so that they may choose to engage in further development of the brief, visiting the site and contributing their thoughts on how best to shape it to achieve the intended outcome.

This may be an iterative process. At the end of it, however, the client should have a significantly improved – or at least tested – project brief. This is then used as part of a 'normal' mini-competition.

Work at 59 sites has so far been tendered in this way, delivering around 70mW of power. Annually, these projects are expected to save £900,000 and bring about a 7,500 tonne reduction in carbon dioxide emissions, exceeding what was expected when the framework was awarded.

## **A focus on whole life cost**

6.2.27 Throughout the procurement process – from project conception to contract award, the public sector focus should always be on the whole life cost of an asset – that is to say, the costs of constructing, owning, operating, maintaining and disposing of the asset. Again, this is something which Audit Scotland has previously commented on. In 2008, it said:

“Explicit consideration of whole-life costing within project appraisals and benchmarking project costs remains relatively unusual... Public bodies should build whole-life costs into business cases and subsequent project reporting.”<sup>22</sup>

6.2.28 This recommendation remains fundamental to achieving best value for money (the Property Advisers to the Civil Estate estimated the capital cost of a building to be typically only 10-20 per cent of the cost of owning and operating it over its expected life<sup>23</sup>) and so we believe it to be worth repeating here, and worth underlining that where this is not already happening, it should, as a matter of priority.

6.2.29 Of course, the point has been made to us on several occasions that the best value options over the whole life of an asset often cost more upfront. A combination of constrained public finances and funding arrangements for the public sector – in particular, the separate treatment of capital and revenue funding – do not necessarily incentivise investment in the best value options over the whole life of an asset. Several bodies, such as the Westminster Sustainable Business Forum<sup>24</sup> have looked at this relationship.

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<sup>22</sup> Review of major capital projects in Scotland, How government works, Audit Scotland, 2008

<sup>23</sup> Guide to the appointment of consultants and contractors, Property Advisers to the Civil Estate, 1998

<sup>24</sup> Costing the Future: Securing value for money through sustainable procurement – The final report of the Westminster Sustainable Business Forum’s inquiry into sustainability in public procurement, 2008

6.2.30 These points are far wider than can be addressed by this report – or indeed by the Scottish Government acting alone. But we do not believe them to be valid reasons not to undertake proper whole life cost analysis. Indeed, in times of financial constraint, it is arguably even more important to understand the impact which capital investment decisions made today will have on revenue funding for years to come.

6.2.31 Key to increasing the public sector’s capability in this area will be improving its understanding of how its assets perform over a number of years. Chapter 9 of our report deals with recommendations to improve the use and understanding of data. Building Information Modelling (discussed in chapter 8) can also help, as the UK Government’s “Soft Landings”<sup>25</sup> approach has been trying to achieve. Chapter 8 also discusses the importance of considering whole life costing for a truly sustainable approach.

#### 6.2.32 **Recommendation:**

**Design and whole life costing should be afforded appropriate priority in any construction procurement process. A comprehensive business case and procurement strategy, focusing on desired outcomes and whole life costs should be developed. This will require the earliest possible engagement between clients, users, designers and contractors.**

### 6.3 Framework agreements

6.3.1 Framework agreements have been a key part of the procurement landscape in Scotland following the McClelland report, and are being used widely in the construction sphere.

6.3.2 We have had significant, and mixed, representations on the role that frameworks play. From an industry perspective, one might cynically summate that a framework agreement is good if you are one of the named suppliers, and bad if you are not.

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<sup>25</sup> The Government’s Soft Landings Policy, Cabinet Office, September 2012

6.3.3 But there are also some genuine and understandable concerns. With framework agreements typically lasting for several years, the impact on a firm of not winning a place on a framework agreement can be far greater than the impact of not winning a one-off contract. Smaller firms can feel this the most keenly, particularly if they have a history of working for the public body in question.

6.3.4 On the flip-side, of course, those firms who do successfully win places on a framework agreement have the opportunity to tap into a steady flow of work for the next few years, potentially to grow and to employ more people in their local area.

6.3.5 For its part, the public sector has been virtually unanimous in its view of framework agreements – they are more efficient in getting projects to market and they facilitate the development of more integrated supply chains offering opportunities for clients to benefit from improved value for money arising from simplified ‘call-off’ processes and potentially from economies of scale, but also for firms in the supply chain to develop business relationships with each other creating an environment that encourages capacity and innovation.

6.3.6 And indeed, there are many examples of framework agreements which have achieved exactly this. They are an integral part of the way in which the Scottish public sector procures, and we fully support their role in the procurement process.

6.3.7 There is already a good deal of guidance available to public sector purchasers on the setting up and use of framework agreements as part of the Procurement Journey on the Scottish Government website, and in Scottish Procurement Policy Note (SPPN) 05/2010.

6.3.8 However, across the board, more needs to be done to ensure that when framework agreements are used, SMEs’ access to work is considered, and, wherever possible, SMEs are given a reasonable opportunity to bid for work. Some framework contracts do this already, and lessons should be learned from these.

6.3.9 Economic impact cannot currently be used as a contract award criterion – for example, a contracting authority cannot use the fact that a firm is a local SME as any part of the basis on which it awards it a contract, or a place on a framework.

6.3.10 However, frameworks can be set up to make it easier for that same local SME to compete, fairly, for some of that work. For example, the framework might be split into a number of lots on the basis of geography or value of work, or decisions taken not to aggregate demand to a level at which SMEs cannot realistically compete. This should always be a key consideration in developing procurement strategies – particularly in remote and rural communities.

6.3.11 Another concern raised with us is that some frameworks are set up – at significant cost to all parties concerned, but then the volume of work envisaged does not materialise. Whilst this will sometimes happen as circumstances change, it is clearly undesirable, and should be avoided. In particular, we are told that some contracting authorities set framework agreements up, or enter into them, with the intent of using the terms agreed as a bargaining tool with which to obtain better rates from firms not part of the agreement. Whilst this may drive some short term savings, undermining the standing of frameworks is unlikely to lead to long-term benefits.

6.3.12 **Recommendation:**

**Guidance on best practice in the use of framework agreements should always be followed, in particular in allowing opportunities for SMEs to participate.**

6.3.13 Existing guidance on the use of frameworks, such as SPPN 5/2010, should be built upon and tailored to a construction setting. This should aim to ensure that frameworks follow best guidance, in a way which does not discriminate against Scottish SMEs. The guidance should take account of the findings of the report by the Working Group of the UK Government Procurement and Lean Client Task Group on the Effectiveness of Frameworks.<sup>26</sup> Assessment of how well contracting authorities are performing in this regard should be developed as part of the Procurement Capability Assessment.

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<sup>26</sup> Government Construction Strategy “Final Report to Government by the Procurement / Lean Client Task Group”, appendix G, 2012

## UK-wide frameworks

6.3.14 A specific issue which has been raised is the use of UK-wide frameworks, or the use by public sector bodies in Scotland of frameworks set-up by regional purchasing bodies outwith Scotland – the latter an issue which also exercised Cuthbert and Cuthbert, who concluded that:

“Unless there are very good reasons to the contrary in any specific case, Scottish purchasing organisations should not adopt framework agreements which have been negotiated by regional purchasing bodies elsewhere in the UK”<sup>27</sup>.

6.3.15 We have already noted in this chapter the importance of frameworks to the public sector. However, where Scottish, regional or local framework agreements do not exist, purchasers may turn to UK-wide or other frameworks to meet their needs and potentially reduce opportunities for Scottish firms.

6.3.16 We accept that there are some circumstances in which it is appropriate to use a UK-wide, or other regional framework. The economies of scale offered by such frameworks may make their use manifestly the sensible choice, or they may offer something highly specialised and not readily available in the Scottish market-place, some may even be Scottish-led. There are also some national frameworks which are alert to the potential impact they may have on local supply chains and have developed key performance indicators (KPIs) to monitor and encourage access to opportunities within their framework.

6.3.17 Whilst contracting authorities cannot legally discriminate in favour of firms because of their location or size, we do believe that wherever possible, Scottish SMEs should be given a fair and reasonable opportunity to bid for work.

6.3.18 This argument can also logically be extended to Scotland-wide frameworks, which may not be as attuned to the various regional economies as a more localised framework – although it should be noted that even national frameworks can be broken into regional lots.

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<sup>27</sup> Using our Buying Power to Benefit Scotland – the case for change, section 8, Cuthbert and Cuthbert, The Jimmy Reid Foundation, 2012

6.3.19 There is a balance to be struck, however, between the additional benefits which might be achieved by ever-increasing local procurement, and the efficiencies which might be offered by larger framework agreements.

6.3.20 We do not attempt to say where this equilibrium is to be found. It varies in each instance, and depends on factors such as the capacity and competition within the 'local' market, the anticipated demand within that area, and price.

6.3.21 Price is always, rightly, a key consideration in any public procurement decision, and the recent squeeze on public finances has no doubt brought it into sharper focus. We are keen, however, that in undertaking their cost-benefit analysis, contracting authorities should place sufficient value on improving access to the local market – both in terms of growing a competitive market base to respond to future tenders, and also in terms of the value inherent in supporting economic growth.

6.3.22 **Recommendation:**

**When used inappropriately, UK-wide frameworks and frameworks negotiated by regional purchasing bodies elsewhere in the UK can have the effect of preventing SMEs from participating in public procurement. Guidance should be developed and implemented on the appropriate use of such frameworks. This guidance should pay particular heed to the value of growing local economies.**

## **6.4 hubCos**

6.4.1 hubCos are described in appendix 3, and will clearly be an important part of the construction landscape in Scotland over the coming years. In the spring of 2013, we asked each hubCo what the value of its pipeline of work was – collectively it already amounted to more than £1.5 billion at that stage.

6.4.2 The hubCos are still relatively young (indeed the South-West hubCo was formed only in late 2012), and it is too early to pronounce definitively on their efficacy. However, there is undoubtedly tremendous potential for hubCos to deliver real value for money – building still further than framework agreements on the Egan principles of long-term partnering. hubCos can also potentially get projects to market more quickly than can traditional procurement exercises.

6.4.3 A hubCo's performance is monitored by its territory partnering board (made up of representatives of the public sector participants), and measured by a series of KPIs. These show that hubCo projects are successfully delivering socio-economic and environmental benefits. Figures supplied to us by the Scottish Futures Trust in May 2013 show that out of £50 million worth of projects recently delivered and procured by hubCos, some 74 per cent of the prime cost value was awarded to SMEs (who were able to tender for 82 per cent of total tendering opportunities). Notwithstanding this performance in providing work for SMEs, there may be a case for setting minimum contract values for taking projects through hubCos in order that small projects can be awarded using traditional means of procurement.

6.4.4 Some concerns have been expressed to us about hubCo operations, however. For example, there is a specific issue relating to the payment of design fees. Under the standard hubCo operating model, designers do not get paid their design fees until financial close. This means that they have to bear a heavy cash flow burden for anything up to a year.

6.4.5 We have had significant representation from the design community on this issue, and we agree that it is not a reasonable or sustainable way of working. We are reassured that hubCos and the Scottish Futures Trust recognise these concerns, and we understand that a potential solution is close to being found.

6.4.6 Other, more general, concerns have also been expressed to us concerning how the public sector can be sure that hubCos are delivering value for money, particularly given the length of the hubCo agreements (potentially up to 25 years).

6.4.7 We have been told that there are several key points in the development of a hubCo project where value for money is assessed. We understand that all new projects must be benchmarked against comparable projects before the initial 'new project request' is submitted. We further understand that during hubCos' development of the project, pricing reports and further comparisons must be produced, and that prior to the submission of the stage two price, a minimum of 80 per cent of the prime cost must have been tendered. Compliance with value for money measures must be achieved for every project, and is reported as a KPI monitored by each hubCo's Territory Partnering Board, which could potentially remove the hubCo's right to exclusivity if performance is not up to standard.

6.4.8 These arrangements seem broadly sensible, although it does strike us that there is still some scope for standards to vary amongst hubCos, and we would suggest that there is potentially therefore a greater role for the National Programme Board, which oversees the hubCo programme, both in ensuring that value for money is being consistently achieved across the five different territories, and in ensuring that it is seen to be achieved.

6.4.9 That latter point is particularly important, as public and industry confidence in the operation of the hubCos will be key to their success. There is much concern in the industry at the moment about the effect of being "locked-out" of public sector work for 25 years. We are told that procedures for refreshing the hubCo's supply chains are in place, but this is clearly not widely known or understood; we would suggest that this needs to be better communicated to the industry at large.

6.4.10 The National Programme Board also has a key role to play in ensuring that as the hubCos are now all moving into a fully operational phase, they are able to learn lessons systematically from each other about how best to make the model work.

6.4.11 **Recommendation:**

**Further guidelines about certain aspects of the operation of the hubCo model should be developed.**

The guidelines should include:

- Continuation of the work to develop a solution to the issue of the delay in payment of design fees until financial close
- Consideration of expanding existing arrangements for monitoring performance, the achievement of value for money and design quality and the continued compliance with the terms of the original contract advertisement
- The exchange of information between hubCos to reinforce best practice and share ideas
- Consideration of the desirability of setting minimum contract values to be delivered by hubCos.

## **6.5 'Self-delivery'**

6.5.1 We have come across repeated concerns about the practice of awarding main contracts for small projects to large firms who then immediately sub-contract to smaller, or more local, firms. This can build in an unnecessary layer of overhead and profit.

6.5.2 Smaller firms have also told us that in such circumstances they are often getting a raw deal from acting as a sub-contractor – by contracting directly with the client, they assert that they would benefit from greater control of their own projects, and a higher margin, whilst the client would benefit from a lower cost and a direct relationship with those carrying out the work.

6.5.3 Scottish Water has embarked upon a programme designed to create fit-for-purpose supply chains that increase what they refer to as 'self-delivery' of programmes of work by alliance and joint venture partners, rather than significant work passing through primary contractors to sub-contractors. It achieves this by specifying and contracting on the basis of an approved level of direct delivery which it believes provides the most efficient allocation of work between "self-delivery" and the use of the sub-contractor market.

6.5.4 Scottish Water expects to achieve efficiencies from project costs through productivity improvement, reduced fee on fee, innovation and a more aligned and partnering engagement by pursuing this route.

6.5.5 Of course, there are some risks. It could mean that less work ends up filtering through to the smaller, local firms – although Scottish Water tells us that the evidence to date is that they are tending to contract more directly with SMEs. We understand that the proportion of SMEs in the Scottish Water supply chain has increased from 60 per cent to 71 per cent over the past few years, with over 90 per cent of total spend going to business that have locations and resources in Scotland.

6.5.6 As part of the fit-for-purpose supply chain design, Scottish Water has created regional-based contractor frameworks covering the Highlands, Argyll and Islands. These are specifically designed for smaller value capital work. We understand that Scottish Water intends to create further regional frameworks covering the Borders and the North-East.

6.5.7 The key to this SME strategy will be continuing to ensure that contracts are of a suitable size and nature for SMEs to perform.

6.5.8 However, one reason often cited in favour of contracting with a larger firm which then sub-contracts is that it simplifies the project management for the client, who only has to deal with one firm, instead of a multitude (in the case of aggregated projects). There is clearly some merit in this argument, although, regardless of who is delivering a contract, clients will always still need some contract management capacity. It has also been put to us that clients sometimes favour larger contractors as they instinctively feel that they provide greater reassurance of standards – such as in health and safety or financial stability.

6.5.9 The Scottish Water approach offers potential, and should be explored.

#### 6.5.10 Recommendation:

**The potential for savings to be delivered from clients enforcing the ‘self-delivery’ of contracts by main contractors should be investigated, with particular reference to the work being undertaken by Scottish Water.**

### 6.6 ‘New models’ of procurement

6.6.1 The UK Government is currently trialling three models of construction procurement – Two Stage Open Book, Cost Led Procurement; and Integrated Project Insurance<sup>28</sup>. Some elements of the processes included in these trials are already being used by parts of the public sector in Scotland.

6.6.2 In the Two Stage Open Book model, framework suppliers are asked to provide an outline brief and cost benchmark for a project, from which one is chosen to work up a proposal on the basis of an open book cost. A key outcome anticipated through the use of this model is to reduce supply chain bidding costs even further.

6.6.3 In cost-led procurement, the client puts in place a framework agreement with one or more integrated supply chain teams, with selection based on the ability both to beat a prescribed cost ceiling in the first project, and to achieve further cost reductions in later projects through continuous improvement. For each project, provided that at least one of the supply teams can beat the prescribed cost ceiling, whilst maintaining the required quality, it is selected to deliver the work (if more than one can, they are scored on their bids). If none of the teams on the framework can beat the cost ceiling, the project is advertised normally.

6.6.4 Integrated project insurance is a new form of insurance which covers cost overruns up to an agreed liability cap. Key to the delivery of projects under this model is an assurance team which monitors and reports to the insurer on the key project risks.

6.6.5 These trials are of interest, although they are not yet at a sufficiently advanced stage for us to have formed a view on their effectiveness.

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<sup>28</sup> Final report to government by the Procurement/Lean Client Task Group, July 2012

#### 6.6.6 **Recommendation:**

**Developments in the UK Government’s trials of its three ‘new methods’ of procurement should be monitored and guidance developed for their use in Scotland, if appropriate.**

### 6.7 **Contract selection, terms and conditions**

#### **Contract forms**

6.7.1 Through our many stakeholder engagement meetings it has become obvious that public sector clients are using a myriad of contract forms.

6.7.2 In some cases, there has been a clear selection process applied to contract choice which addresses the nature of the work, the procurement method and the risks lying within a project.

6.7.3 In others, it appears that there has been much less thought and planning and rather a continuation of “tried and tested” historic practice, regardless of whether the contract type is the best fit or approach for the project in question. It is noticeable in some sectors that newer contract forms such as NEC3 and PPC2000, which promote a partnership approach to project delivery, are less widely used.

6.7.4 We do not seek to promote any particular contract form, but we find it self-evident that thought must be given to the pros and cons of whichever contract form is used for a given project.

#### 6.7.5 **Recommendation:**

**Thorough consideration of options must be applied to contract selection as part of the pre-commercial stage.**

6.7.6 To help achieve this recommendation, an updated comparison matrix of the main standard contract types currently available should be compiled and regularly reviewed and maintained.

6.7.7 We also believe that by recording the contract types being used for contracts awarded through Public Contracts Scotland (PCS) (see paragraph 7.3.9), greater intelligence on the usage of contracts could be accumulated and the public sector could more readily share experiences of different contract types and how well they have delivered. This will in turn help to make future contract selection more informed and the public sector client more confident in selecting the contract type most appropriate for the project.

6.7.8 Support should be available to authorities in contract selection decisions, making clear that ownership of risk and decision-making will still rest with the individual contracting authority.

6.7.9 On project completion and during post-occupancy evaluation, contracting authorities should also consider how well their selected contract type has delivered for them. This should be done in terms of quality of the end-product, value for money of both the project and the resource required to contract manage it, the collaboration it allowed and whether it delivered any additional benefits such as innovation. This learning should then be applied to future projects.

### **Risk allocation and contract amendment**

6.7.10 Another issue with current practice in contracting is the level of modification to which some standard contracts are being subjected. This is often intended to shift more risk on to the contractor.

6.7.11 Sometimes this may be appropriate. However, this is not always the case. Risk should lie with the party most able to understand and manage it, and if that is with a contractor, be priced accordingly.

6.7.12 Chapter 7 discusses the need for skilled and capable teams to be involved in every construction exercise. Part of their role is to understand both the risks involved in a project, and the risk appetite of their organisation.

6.7.13 That level of understanding informs the decision-making process on risk allocation in contracts. Once the level of risk has been quantified, an organisation might judge that the likely cost in choosing to accept that risk itself is less than the cost of paying another party to manage it – just as the government self-insures the civil estate, rather than paying for commercial insurance, for example.

6.7.14 However, therein lies a key point. We have been told – anecdotally, at least – that some client authorities view the current economic climate as an opportunity to pass risk off to contractors wholesale, without them then having an opportunity to price accordingly.

6.7.15 Public sector buyers clearly have an obligation to get the best deal for the taxpayer that they can. This must be sustainable, however. Risks will often not be realised, but inevitably sometimes they will be. If contractors have accepted these risks without explicitly factoring them into their prices, there is a very real danger of this driving undesirable behaviours – cutting corners on quality in an effort to claw that cost back elsewhere, for example.

6.7.16 Alternatively, just as some clients are alleged to be using their current market strength to push risk on to contractors, so the main contractor might use its market position to push that risk to sub-contractors, and so on down the supply chain until the risk lies wholly inappropriately with the party least able to manage that risk, and most vulnerable should that risk materialise. This can lead to insolvencies and significant disruption to the planned programme for the project

6.7.17 If – as some people have suggested to us – this is reflective of current practice in some areas, it is clearly neither sustainable nor desirable.

6.7.18 **Recommendation:**

**There must be an open, mature and reasonable discussion between parties when deciding on the allocation of risk.**

6.7.19 On the part of the client, this means accepting that the party who accepts the risk should be fairly compensated for so doing.

6.7.20 There is a role for industry, too, in addressing its own behaviour. We speak in chapter 10 about the need for contractors to act reasonably towards their supply chain – and so, just as the public sector client should engage in constructive discussion about allocation of risk with the contractor, so too should the contractor with its supply chain.

6.7.21 The amendment of contracts presents two further main risks. Firstly, that additional clauses may be incompatible with the remainder of the contract, and may lead to contractual disputes, or to clients being liable for costs which they thought that they had passed to the contractor.

6.7.22 Secondly, that, as the complexity of the contract increases, parties to it face increasing legal costs. Indeed, one Scottish contractor told us that in both 2011 and 2012 their legal bill charged to contracts was six times higher than it was in 2006.

6.7.23 Whilst not in any way seeking to diminish the rights or duties of either party to a contract to protect their interests with appropriate contract conditions, we do believe that there has to be a greater recognition of the pressures which can be caused by over-zealous amending of standard forms of contract.

6.7.24 **Recommendations:**

**Any variations to standard forms of contract should be kept to a minimum and used only when absolutely necessary to take account of the particular circumstances of the project.**

**We also recommend that any such amendments should be clearly highlighted within contract documentation so that client and contractor are clear on the variations being imposed to the standard terms.**

### **Painshare / Gainshare**

6.7.25 The construction industry has a background of confrontational attitudes between client and contractor. This is not an issue which the public sector alone can resolve and indeed it would be naïve to think that cultural attitudes can be changed quickly.

6.7.26 However, we have seen evidence of good practice which incentivises both parties to work constructively towards the same ends. One way in which this is achieved is by the use of so-called ‘painshare / gainshare’ arrangements, whereby the ‘pain’ of cost overruns is shared, as is the ‘gain’ of savings.

6.7.27 The gain sharing element of this equation has the potential to be a particularly strong driver of innovation in the supply chain. This is used successfully in the health sector as part of the Frameworks Scotland contracts, amongst others. In Frameworks Scotland contracts, gainshare is split 50:50, although the sharing is limited to the first five per cent of savings, so as to incentivise accurate initial costings.

6.7.28 **Recommendation:**

**Specific guidance should be developed to help contracting authorities to decide when and how to use painshare / gainshare arrangements.**

## 6.8 Payment terms

6.8.1 The issue of prompt and fair payment to contractors and sub-contractors has received much political and media attention in recent times. This is unsurprising - cashflow is critical to the success of businesses at any time; in the current economic environment where finance can be extremely difficult to raise, it is a constant worry for many firms in the construction industry. You do not need to look far to find examples of otherwise sound firms failing due to cashflow shortages – often caused by delayed payment.

6.8.2 The Scottish Government’s efforts in recent years to standardise its contractual payment terms to 30 days, and to aspire to pay all suppliers within ten days<sup>29</sup> are broadly welcomed, acknowledged and appreciated by the industry. Other public bodies have adopted similar strategies.

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<sup>29</sup>In 2011-12, the Scottish Government, its Executive Agencies and the Crown Office and Procurator Fiscal Service made 94.4 per cent of all payments within ten days: The Scottish Government Consolidated Accounts for the year ended 31 March 2012

6.8.3 We are told, however, that not all public bodies have adopted even the 30 day payment term – or if they have, that they are not necessarily meeting this objective.

6.8.4 **Recommendation:**

**All public bodies should adopt a maximum 30 day payment term to their suppliers, as detailed in Scottish Procurement Policy Note 08/2009, and this should form the target against which performance in meeting payment terms is monitored as part of procurement capability assessments (unless shorter targets have already been adopted by the organisation in question).**

6.8.5 Payment to main contractors from public sector clients is only a small part of the problem, however. There is an endemic culture of extended payment terms in the construction industry (which is not necessarily the same thing as late payment), particularly from larger (tier one) contractors, to sub-contractors. Recent research by University College London (UCL) found that:

“as a whole, construction firms take much more trade credit (from their suppliers) as a proportion of their balance sheet than do firms in the rest of the economy. They also give much more credit to their customers as a proportion of their balance sheet... Tier 1 firms were found to be net receivers of trade credit, whereas tier 2 firms were found to be large net providers of trade credit... In other words, it is highly likely that the trade credit flow from tier 2 to tier 1 contractors substantially exceeds in size the trade credit flow from suppliers outside the construction industry to tier 2 contractors”.<sup>30</sup>

6.8.6 We believe that this has to change. Most importantly, it has to change because the pressures which it is placing on sub-contractors are unsustainable and can cause insolvencies and damage to the economy as a whole, but also because such practices are inherently unfair.

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<sup>30</sup> Trade credit in the UK Construction Industry: An empirical analysis of construction contractor financial positioning and performance, page 73, UCL, July 2013

6.8.7 We recognise that this change cannot happen overnight – the same UCL report also found that:

“Construction firms are relatively undercapitalised, compared with firms across the rest of the UK economy... This is most especially the case for tier 1 contractors and for large contractors. Undercapitalisation both puts firms at more risk of financial failure and limits their ability to invest in business models requiring injections of capital”.

6.8.8 Those major contractors should consider themselves on notice, however – if their business model relies on extended payment terms to sub-contractors to make money, it needs to change.

6.8.9 In large part, of course, this is a problem of industry’s own making, and it is rightly for industry to address. We discuss this further in chapter 10.

6.8.10 But there are some steps which the public sector can take. Legislation is already in place, in the form of the Late Payment of Commercial Debts (Interest) Act 1998, as amended earlier this year by the Late Payment of Commercial Debts (Scotland) Regulations 2013.

6.8.11 However, this still puts the onus on the party who has not been paid promptly to seek a resolution. Often, we are told that smaller firms and sub-contractors are reluctant to do this for fear of impacting on future business opportunities. We believe that there is more, therefore, which the public sector could do. Indeed, our one early response to Ministers was in relation to this point, so important do we view it.

6.8.12 **Recommendation:**

**The use of Project Bank Accounts should be trialled in Scotland.**

6.8.13 This recommendation was accepted by Ministers in April 2013, and we understand that suitable trial projects are now being identified to participate in the pilot.

6.8.14 Project Bank Accounts are ring-fenced bank accounts from which payments are made directly and simultaneously by a client to members of the supply chain. This removes the incentive for main contractors to withhold or delay payment, and thus there is the potential to unlock the flow of cash throughout the supply chain and assist the solvency of sub-contractors and suppliers. We recommend that this trial is monitored and assessed for suitability for future wider application.

6.8.15 There are also other ways of working being developed to help address this issue – such as supply chain financing. Supply chain finance currently has a role to play in the short-term in helping the industry to adapt to shorter payment terms, but we do not believe that a scheme which requires sub-contractors to pay a financing fee to access funds they should be receiving anyway is fundamentally fair, and it should not be endorsed as a long-term solution.

6.8.16 A final issue in relation to payment terms is the current effectiveness of management of contract terms which require prompt payment down the supply chain, and levels of compliance currently being achieved in public sector contracts.

6.8.17 Much evidence has been shared with us of clauses being included in main contracts which refer to payment terms by the contractor to the supply chain, but these appear not be widely enforced, managed or monitored by the client except on an informal basis as sub-contractors raise issues directly with client organisations.

6.8.18 Part of the explanation for this may be either that inadequate resource is allocated to contract management, and / or that the hand-offs from those placing the contract to those managing it are insufficient.

#### 6.8.19 **Recommendations:**

**Public sector clients need to ensure that there is a clear understanding between those involved in pre-contract award stage and those involved in delivery on the public sector requirement for fair payment.**

**Contractual terms between client and main contractor should consistently outline fair payment terms for supply chain participants.**

**Clients should ensure that appropriate resources are allocated to contract management and enforcement of terms and conditions of contract.**

6.8.20 We are well aware, however, that active 'policing' of payment terms down the supply chain is potentially a resource-heavy activity, and so we would encourage clients to find alternative ways of ensuring that their contract terms are carried out – such as asking contractors to file quarterly reports on their payment performance (backed up by random sampling); regular surveys of named sub-contractors on major projects; or establishing a route for sub-contractors to contact contract managers directly when they have concerns.

#### **6.9 Cash retentions and other project assurance tools**

6.9.1 The practice of cash retention is long-standing in construction. It involves the client or main contractor retaining a percentage of the funds due to a contractor or sub-contractor until the end of a designated defects liability period after the completion of work carried out. This acts as a safeguard against that firm failing to return to the site to correct any defects that arise, and the retention should be released as soon as that period is concluded.

6.9.2 Few issues which we have encountered have engendered as much feeling, or such firmly entrenched points of view as those relating to this topic.

6.9.3 Typical views which we have heard from industry are that cash retentions are an outdated anachronism; that if pre-qualification is carried out properly by the client then they will not end up employing a firm liable to insolvency or poor workmanship against which they need to hold a cash retention; that firms are in any case contractually obliged to make good any defects; and that at three to five per cent, the cash retention often represents a firm's entire profit margin on a project.

6.9.4 The Specialist Engineering Contractors' Group in particular has been vociferous for some time now in their view that cash retentions should have no place in modern construction contracts.

6.9.5 For their part, the public sector representatives to whom we have spoken largely view cash retentions as a necessary part of their toolkit for insuring against defects.

6.9.6 The Scottish Construction Procurement Manual, which applies to the central government sector, sets out the need for those procuring construction works to employ project assurance measures:

“Realistically, defects occur in most construction works and project owners therefore need to be assured by measures designed to protect the public purse from becoming liable for defective or sub-standard work and to ensure their projects are completed as contractually-specified”<sup>31</sup>.

6.9.7 It does not, however, specify that this should necessarily be achieved by the use of cash retentions:

“Decisions should be project-based and processes should be proportionate to the specific circumstances of the project... Cash retentions or other traditional means of assurance should not prevail purely by default”.

6.9.8 The manual also lists some alternative project assurance measures to cash retentions – such as retention bonds, performance bonds, and parent company guarantees.

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<sup>31</sup> The Scottish Construction Procurement Manual, section 2, Scottish Government

6.9.9 We consider this position to be basically sound. Contracting authorities must have some means of ensuring that issues that arise following the completion of a project are rectified appropriately, and retentions are clearly one way of achieving this.

6.9.10 However, we are concerned by the potential for cash retentions to be overly burdensome on contractors – if the level of retention is too high, the period of retention too long, or, for example, if cash retention is unnecessarily combined with other project assurance measures.

6.9.11 We also therefore consider that there needs to be clearer guidance available to contracting authorities to help them judge when cash retentions are the proportionate tool to use (and what effect that might have on price) – and equally, when another tool might be more appropriate.

6.9.12 When such tools are being used, this guidance should also cover best practice – for example what level of cash retention, bond and professional indemnity insurance is appropriate.

6.9.13 **Recommendation:**

**Cash retentions should be used only after careful consideration by contracting authorities, and not as a default measure. Whilst contracting authorities have a duty to safeguard public funds, they should also be mindful of the potentially detrimental effects of cash retentions on their contractors. Greater guidance should be developed to help contracting authorities to determine when and how they should use cash retentions and other project assurance tools in an appropriate and proportionate manner.**

6.9.14 A second facet of discussion around the use of cash retentions has focussed on their use by main contractors employing sub-contractors. This is discussed further in chapter 10, when we look at what the industry should do for itself.

6.9.15 What is clear, however, is that if cash retentions are being used as they are intended, and not as a profit centre, then the monies withheld should be ringfenced, and held in a transparent trust account.

6.9.16 We have already made a recommendation that the use of project bank accounts (PBAs) should be trialled in Scotland. We believe that there may be potential for these, or perhaps similar such arrangements to be used to administer cash retentions.

6.9.17 **Recommendation:**

**Lessons should be sought from the trial of project bank accounts in Scotland about how PBAs, or other, similar trust accounts might be used to administer cash retentions.**

## **Project Assurance**

6.9.18 Both the McClelland Report, and Audit Scotland in 2008 stressed the need for construction projects to go through Gateway reviews. These are defined on the Scottish Government website as:

“...short, focussed reviews of a programme or project that occur at key decision points in the lifecycle. The Reviews are conducted on behalf of the programme/project's Senior Responsible Owner by a team of experienced practitioners, independent of the Programme/Project Team.

The review is intended to be supportive and forward looking and will take future plans into account but only as future intentions, rather than actualities”.

6.9.19 Assessment against the criteria for Gateway Reviews is now mandatory for projects and programmes being taken forward by organisations covered by the provisions of the Major Investment Section of the Scottish Public Finance Manual (those which have a total budget of £5 million or more, inclusive of fees and VAT), with a Gateway Review itself being mandatory for those projects and programmes assessed as potentially high-risk. Mandatory, or not, however, proportionate programme and project assurance is good practice, and should be carried out across the public sector.

6.9.20 **Recommendation:**

**A consistent approach to project assurance should be used for all major construction projects. Gateway reviews should be the benchmark against which other models should be tested**

6.9.21 Where methods other than Gateway reviews are used, these should be tested against the rigours of the Gateway review process.

## **7. Capability and capacity**

### **7.1 Overview**

7.1.1 In Chapter 4, we set out our recommendations on the need for the political will for change to be supported by appropriate leadership, drive and accountability, whilst in chapter 6 we set out some of the fundamentals of the approach to market. Successful implementation of all of these recommendations, however, relies on improving the capability and capacity of those organisations which are procuring construction work, as well as ensuring that a range of suitable tools and resources are available to support them

7.1.2 Underpinning many examples of poor practice is the fear of challenge, which prevents some bodies from using the full bandwidth of procurement options permitted under law. Related to this, we have received representations that the current EU Directives have been in some ways ‘gold-plated’ in Scots law – an allegation which the Scottish Government strenuously disputes. As there is a new EU Procurement Directive on the horizon, we have not investigated this area in any detail, but would instead urge all parties to work together to minimise the scope for any such concerns – real or perceived – to arise from the transposition of the new directive.

### **7.2 People and skills**

7.2.1 Not every organisation lacks construction procurement expertise – on this point we want to be very clear – many public sector organisations in Scotland have tremendous experience and expertise.

7.2.2 A problem, however, is that this experience and expertise appears to vary significantly from one organisation to the next. Another problem is that we can only report what ‘appears’ to be the case from the many stakeholder interviews we have carried out – we cannot populate the spectrum from good to poor practice, because whilst Procurement Capability Assessments (PCAs)<sup>32</sup> are used to evaluate annually how organisations undertake their procurement generally, they are not sufficiently fine-tuned to be able to assess the specifics of construction. Furthermore, not all organisations which spend public money on construction currently participate in the PCA process.

7.2.3 It is generally accepted that any organisation which is spending public money has an obligation to spend that money well and to seek maximum value for money. In our opinion, this means that any organisation using public funds (in part or in entirety) to procure construction work must deploy appropriately skilled people to do so – with no exceptions.

7.2.4 We recognise though that there is no one-size-fits-all prescription to make sure this happens. It is clearly not reasonable to expect an organisation which is an occasional procurer of relatively straightforward construction work to retain the same in-house capability and capacity as one which is a regular procurer of very complex work. It is also important to recognise that, whilst procuring authorities should in general take a forward looking strategic approach to assessing their in-house capability and capacity, they should also, as part of each individual procurement’s business planning stage, undertake an assessment of the adequacy of their skills and expertise to manage that specific procurement, which may have specialised characteristics which go beyond the team’s capability.

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<sup>32</sup> The objective of the PCA is to assist organisations to improve their structure, capability, processes and ultimately performance, by attaining a level of performance that is appropriate to the scale and complexity of their business. PCAs assess capability in key areas against common criteria and standards which allows public bodies, locally, at sector level and nationally, to identify where best practice already exists, where there are gaps and where continuous improvements and efficiencies can be implemented.

7.2.5 So, if not retained in-house, that capability must be accessed somehow. Collaboration, sharing of services and using other expert public construction procurers as consultants are some potential options for filling this gap. Examples of varying practices in this area range from Aberdeen and Aberdeenshire Councils sharing the services of a Head of Procurement to Fife Housing Association Alliance Lead Developer Partnership, where Kingdom Housing Association provides new build housing procurement services for the four local RSLs.

7.2.6 Our recommendations in this area suggest a number of steps to improve capability. Some of these are practical in nature, others require more fundamental behavioural changes. Collectively they are intended to start addressing the weakest performers by establishing a minimum level of expected competence. Some organisations will already meet this – that is commendable, but should not be taken as a signal that they can relax their standards; we fully expect the strengthened construction procurement policy function within the Scottish Government to promote an agenda of improving standards.

7.2.7 In any change programme, relationships are key, and we could not help but be struck by the internecine battle that appears at times to be raging between procurement professionals and construction professionals in some parts of the public sector.

7.2.8 We heard some remarkably candid comments from construction professionals – on both the client and supplier side – about procurement professionals supposedly “taking over” construction. These can perhaps be summarised by the complaint, which we heard more than once, that having “someone who only knows about buying paperclips” being responsible for complex construction projects was a recipe for “disaster”.

7.2.9 Procurement professionals for their part often reported that they had been unable to make the same sorts of inroads into the procurement of construction works in their organisations as they had into the procurement of goods and services, complaining of a lack of ability to influence the procurement strategy. One told us that:

“...the problem in a construction environment is that by the time it gets to the procurement unit, it’s a fait accompli...the procurement team are just being handed something to go and buy, and are not able to bring their skills to bear”.

7.2.10 Whatever the cause of this mutual distrust, it is manifestly self-defeating and must be brought to an end. Some organisations, such as Renfrewshire Council, have managed successfully to align their procurement functions with their construction functions. Such models of joint-working should be non-negotiable.

7.2.11 **Recommendation:**

**Public sector bodies involved in construction procurement must have access to the right mix of professional procurement and construction expertise to ensure that infrastructure is procured effectively. It may not be appropriate for each organisation to retain this expertise on a permanent basis. It may instead be achieved through collaboration with other bodies – either on a project-by-project, or a longer-term basis.**

7.2.12 Guidelines on the necessary blend of required skills should be developed. Procuring authorities should confirm that they have assessed their capability against these guidelines and that they have the capability and capacity to carry out construction procurement or outline the alternative collaborative arrangements through which they plan to achieve this capability.

### **Procurement Capability Assessments**

7.2.13 If an organisation is to improve its performance and ensure that it deploys the right skill set on a project – drawing in support from elsewhere if necessary – it needs firstly to understand the expertise it has at its disposal, and the baseline from which it must improve. It is also important that there is some way of measuring progress in the improvements being made at an organisational level.

7.2.14 There is no need to re-invent the wheel to achieve this. A system of annual Procurement Capability Assessments (PCAs) has already been in place in Scotland since 2009. These assessments address how well individual organisations are carrying out procurement activity, looking at issues such as the leadership given to procurement within the organisation; how the organisation develops its procurement strategies and specifications; how it manages contracts; and how skilled procurement professionals are deployed.

7.2.15 The PCA has been instrumental in driving and measuring improvements in procurement capability across the Scottish public sector, with an increase in the overall national average PCA score from 35 per cent in 2009 to 62 per cent in 2012.

7.2.16 The structure and approach of the PCA has also won recognition beyond Scotland. Recently the Welsh Government adopted it as the basis for their approach in assessing procurement capability, and we understand that it has been adopted as the standard assessment tool across higher education in England.

7.2.17 The PCAs are designed to cover all procurement activity undertaken by participating organisations. However, whilst the basic principles underpinning PCAs are sound, some additional criteria need to be added to ensure that they adequately cover construction, which we do not believe they can do effectively at the moment.

7.2.18 The use of PCAs also needs to be widened. At present, not all organisations to which the public procurement regulations apply undergo these assessments. We believe that any organisation responsible for construction procurement has an obligation to do so effectively and should therefore participate in this scheme.

7.2.19 **Recommendation:**

**The existing PCA framework should be developed to ensure that it adequately assesses, reports on and helps to improve organisations' ability to procure publicly funded construction. Those carrying out the assessments should be suitably qualified to do so and all organisations procuring construction projects with public funding should undergo procurement capability assessments.**

7.2.20 In order to implement this, we believe that the PCA process should be developed to deal appropriately with construction procurement, including separate recording of construction-specific elements. The revised process should be introduced for the 2015 round of assessments. Those carrying out the construction procurement element of the PCA should be suitably qualified to do so.

7.2.21 For those organisations which are not currently subject to PCAs, systems for implementing capability assessment will have to be discussed and agreed with the parties involved – for example the Scottish Government’s Housing Supply Division would need to agree this with the RSL sector.

### **Skills for tomorrow**

7.2.22 Procurement and construction are ever-evolving fields and the public sector is expected to deploy new and more commercial skills. In our stakeholder interviews, project, programme and contract management were three key areas in which procurers of publicly-funded construction were often reported to be lacking – either in resource, or access to appropriate skills.

7.2.23 We need to be able to identify both the current skills profile of those working in public sector construction procurement and their future needs. The current Scottish procurement competency framework has been praised by the Chartered Institute for Purchasing and Supply, and is a good basis. It may need some amendments, however, to ensure that it fully addresses construction issues. The strengthening of PCAs should also go some way to helping with this.

7.2.24 We have considered whether some form of formal approach to learning such as a skills academy for construction procurement professionals would be desirable. In England, those involved in the very largest construction projects are provided with management training by the Saïd Business School. Concern at the lack of expertise in construction procurement has been raised with us repeatedly by stakeholders and we recommend that a learning programme for construction procurement be established. This programme would provide an appropriate blend of learning in procurement and construction professional disciplines, including project, programme and contract management.

7.2.25 Additionally, we believe that creating communities of best practice should be a key priority in ensuring longer-term capability and capacity within the public sector. The potential for creating a “mentoring pool” should be explored to allow those more experienced and capable procuring authorities to share their knowledge and learning and, more importantly, support others to improve their procurement decision making and delivery.

#### 7.2.26 **Recommendations:**

**A current and required baseline of skills in construction procurement should be established.**

**A strategy should be developed to ensure those needs are met through both formal learning and mentoring, building as appropriate on the Scottish procurement competency framework.**

**Consideration should be given as to whether a structured approach to delivering appropriate learning - such as a Skills Academy approach (virtual or otherwise) – would deliver some or all of the required benefits.**

7.2.27 Guidance and expertise should be sought from academia and the relevant professional bodies in implementing these recommendations.

### **7.3 Tools, systems and guidance**

#### **Procurement Journey Guidance**

7.3.1 The management of risk and the fear of challenge has been a constant theme in our interviews with stakeholders. Public sector bodies are very aware of the complex body of procurement legislation, regulation and case law, under both European Union and Scots law, but we believe that these rules are too often used as an excuse for public authorities for poor procurement behaviours.

7.3.2 Understandably, public authorities are anxious to ensure that their procurement practices are not challenged by unsuccessful bidders, with all the attendant direct costs and delay which such challenges entail. However, in some cases this has led to procurement processes and costs of procurement for clients and bidders which are wholly disproportionate to the quantum of the planned spend. Over-elaborate processes can actually achieve the opposite of what is intended by creating less transparency and increasing the risk of challenge.

7.3.3 Many public sector stakeholders have reported a perceived lack of central guidance on construction procurement. Throughout our report, we have highlighted a number of specific areas where we think additional guidance should be developed.

7.3.4 A very great deal of guidance does already exist, however, in the form of the Scottish Construction Procurement Manual. This has the potential to be a tremendous source of information. However, it is not in an easily accessible format, and due to resource constraints, has not been comprehensively reviewed and updated for some time.

7.3.5 We see great value in ensuring that clients procuring with public monies have a comprehensive set of tools at their disposal to help them navigate their Construction Procurement Journey. In response to this we have outlined an overarching recommendation related to guidance, with various strands detailed beneath it.

7.3.6 **Recommendation:**

**New standardised guidelines setting out best practice on the end-to-end construction procurement process should be developed and maintained. As far as possible, the guidelines should be written in plain English and should be in an accessible digitised form, based on the example of the procurement “Journey” for goods and services. The guidelines should be capable of being used in a proportionate way for projects of different sizes and risk profiles as well as being adaptable for different sectors.**

7.3.7 Whilst there may be some merit in then making use of this guidance mandatory, we understand that this is not easy to do. We do believe that adherence to the standards set out in the guidance, as a minimum, should be measured as part of the Procurement Capability Assessment process.

7.3.8 Sub-ordinate to this over-arching recommendation, we have a number of related recommendations which set out matters of good practice, and should be reflected in this guidance.

**Our related recommendations are:**

**a) Good practice guidance on those elements of bids which should and shouldn't be scored and on the focus to be given to quality and whole life costing in the scoring should be developed.**

Concerns were raised with us by both clients and suppliers around the need for greater clarity on the scoring and weighting, particularly of quality criteria, within bids. There was a strong sense that, although a lot of time and effort is often spent on quality aspects of bids, these aspects were then rendered almost meaningless through the high weighting given to price. Conversely, it is also important that if the quality scoring has a higher bearing on the outcome of the tender process, then those elements are suitably monitored and delivered as part of any successful bid.

**b) Public bodies should rightly seek to assure themselves of the competence and skills of bidders. This, however, should be done through asking for appropriate experience – as indeed is current Scottish Government policy – rather than necessarily asking for exact experience of similar project delivery within a short number of years (for example “Supply three examples of community halls which you have built in the last five years”).**

The practice of always asking for exact experience might exclude perfectly competent companies who have not had access to particular projects due to local circumstance or it might result in the appointment of a company which has delivered similar projects at a national or international level, but locally has not. It may also lead to a narrowing of choice, expertise and experience in the construction sector.

All construction projects are different and specific requirements for experience or expertise across the bidder's project team may vary. However, overly-prescriptive requirements have been quoted to us by many suppliers as an unnecessary barrier placed in the way of opportunities to qualify or bid for work.

Clients may feel that they are being as robust as possible in stipulating required experience, but examples of companies which have successfully delivered a £5 million library facility but are then barred - by the same client - from bidding for a £4 million community hall project because they haven't built one or a number in the last few years are blatantly nonsensical. Not only does this sort of behaviour reduce competition, it puts barriers in the way of companies gaining experience and disadvantages SMEs, particularly those in remote and rural areas where SMEs are a vital part of the sustainability of the local economy, and may be in the position to tender the best price.

We recognise that some construction projects are highly specialised in nature - whether through design requirements or construction techniques - and therefore do require precise experience to be demonstrated, but public sector clients should think carefully before specifying their experience requirements to ensure that the field they select from is the strongest it can be.

**c) The ability of a company to deliver a contract should not solely be measured by the use of turnover thresholds. Where annual turnover is part of financial criteria it should be limited to no more than two times the annual contract value as outlined in the EU commission's proposal. Further guidance should be developed on other valid and proportionate methods for assessing financial strength and risk.**

Again we have received many representations from stakeholders, particularly SMEs, who have been excluded from contracts by requirements to have a level of turnover which seems disproportionately high when the size of the contract is considered. Whilst turnover clearly has some – very blunt – role to play in evaluating whether a firm is capable of delivering a given project, it is not a measure of financial stability. Indeed, this was recognised in May 2012 by SPCD:

“Turnover may indicate in broad terms that a bidder has the capacity to deal with the volume of work but it is rarely, if ever, a good indicator on its own and public bodies are strongly recommended to take a more rounded, commercial approach”.<sup>33</sup>

**d) To the extent possible within the full scope of the law, including as may be amended by the new EU Procurement Directive and Procurement Reform Bill, contracting authorities should take the prior performance and behaviour of bidders into account when awarding contracts. Guidance which ensures compliance with legislation should be developed.**

Much frustration has been expressed to us about a perceived lack of clarity in what consideration can be given to previous good or bad performance when awarding new contracts. Clients are fearful of challenge and contractors feel that the poor performance of their peers is being ignored when selection criteria are being considered. Transparent procedures should be developed which allow clients to feel confident in their use but also ensure that suppliers feel that measures are fair and not overly punitive. This ties in with our recommendations on good performance and contract management.

**e) The Scottish Government should reissue its existing guidance to the public sector on how to deal with abnormally low tenders.**

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<sup>33</sup> Scottish Procurement Policy Note 2/2012, 31 May 2012

Stakeholders, both client and contractor, have raised concerns regarding abnormally low tenders or “suicide bidding”. Public sector clients are placed in a difficult position in assessing the deliverability of contracts at low prices, whilst seeking the best value for the public purse. Of course a low tender may be a perfectly legitimate way for a contractor to seek to gain experience of a new area of work, for example. But instances have been quoted to us of low tender prices being submitted, only for the client then to experience a project littered with delays and adversarial contract relations, with resultant claims for extra payment. Further updated guidance on how to deal with low tenders was identified as being a priority.

**f) Guidance should be developed which assists contracting authorities to carry out successful pre-market engagement as part of a construction project.**

We highlight in section 6.2 the need for more pre-market engagement to take place. We are told that one of the reasons for this not happening as much as it should is that contracting authorities are wary of being seen to favour certain companies, and risking a challenge to their process. More developed guidance on how to carry out successful pre-market engagement within the bounds of the law was signalled to us as something which would be welcomed.

**g) Contracting authorities should always make feedback available to both successful and unsuccessful bidders at PQQ and ITT stage. Feedback should be timely, and a model of good practice, building on existing sources, such as the Scottish Suppliers’ Charter<sup>34</sup>, and legislative requirements, should be developed.**

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<sup>34</sup> A joint statement between public sector buying organisations and Scottish businesses to agree to work together to improve public sector procurement processes and dialogue

Another source of great frustration for industry is what is often perceived as a lack of meaningful (if any) feedback on the merits of their tenders – although it should be noted that some examples of very good practice were also highlighted to us. Clients have told us that the fear of feedback being used to challenge the process can sometimes inhibit their genuine desire to give helpful feedback, as can a lack of time. The best examples which we have seen will provide a useful basis for the development of the new model of good practice.

**h) If not already established, public sector procuring authorities should work together to develop forums with locally-operating construction firms which would meet on a regular basis and include economic development teams and construction procurement staff to discuss the pipeline of work, issues and opportunities, with a view to building greater understanding, transparency and improved processes and practice.**

There are some examples of these forums (such as Fife and Forth Construction Forums working jointly to deliver a core programme of events) currently operating and we see them as a crucial piece of the jigsaw in helping to improve communications between the client and industry side at a sub-national level. Sharing of information and best practice, opportunities for two-way feedback on procurement practices and skills and training are just some areas where we see a real opportunity for value to be added.

**i) A formal support mechanism should be developed to help SMEs understand how to compete for public contracts.**

Whether through a combination of forums as outlined above, mentoring pools or improved feedback there is a need to help smaller companies understand the expectations placed on them when competing for public contracts. This coupled with other recommendations in the report should help to allow them to compete on contracts which they are able to deliver.

## **Public Contracts Scotland (PCS)**

7.3.9 The use of the Scottish Government Public Contracts Scotland (PCS) portal is currently optional but from data gathered we understand that over 1,800 works contracts were advertised through PCS between April 2012 and March 2013. Some clients retain their own procurement portals, and some commercially-operated services provide a contracts-notification service to firms for a fee. PCS is free to use for both advertising and looking for publicly-funded contracts.

7.3.10 To ensure consistent sight of publicly funded construction contracts we see a real value in all projects which are advertised to be advertised on the PCS portal. The provisions of the Procurement Reform Bill proposed by the Scottish Government would mean that all works contracts worth at least £2 million, and supplies and services contracts worth at least £50,000 would have to be advertised on PCS. We very much support this proposal. Where supply chains have not been developed by contractors, we would promote the advertising of these opportunities through PCS also.

7.3.11 We do, however, recognise that there is scope for PCS to continue to be improved and categorisation is one area which could be further developed and evolved. One example would be the system for identifying potential private sector interest in new contract opportunities. Stakeholders have commented on the current categorisation leading to them being notified of opportunities which are not related to their business focus.

7.3.12 Of course, there is a counter-argument that the more specific the categorisations are, the greater the chances of a firm missing out on notification of a contract which it could have delivered. There is clearly a balance to be struck here.

7.3.13 Some concerns have been expressed to us about the speed and user-friendliness of some aspects of the PCS operating system, and we recommend that further investigations and user feedback should be gathered to ensure that the recommended increased adoption of the use of PCS can be accommodated and high levels of system performance maintained.

#### 7.3.14 Recommendations:

- a) Practice should be standardised by making the use of Public Contracts Scotland mandatory when advertising publicly-funded construction contracts**
- b) Contractors on major projects should be encouraged to advertise sub-contracts on PCS where they have not already fully identified their supply chain**
- c) Product categorisations used on PCS should be reviewed to ensure that they are as accurate as possible for construction projects.**
- d) SPCD should assess the current performance of the PCS systems through user feedback to ensure high standards are being achieved and are capable of being maintained following adoption of wider usage.**

#### **Pre-Qualification Questionnaires (PQQs)**

7.3.15 Almost all of those we have spoken to, whether client or supplier, have expressed their frustration with the lengthy, resource intensive and costly process of devising, completing and evaluating PQQs. The effort being expended appears to be wholly disproportionate to the value currently being realised from the process.

7.3.16 Consistency in the types of and ways that information is requested in PQQs is sadly lacking across many sectors and sometimes even within the same contracting body. All of this leads to much duplication of effort, with limited added value. We have received consistent comments to the effect that the system rewards expertise at filling in forms rather than underlying competence. Larger companies, with the resources to do so, are said to be engaging or employing resource specialising in writing PQQs. We believe that competence is more important than accreditation and the system must allow public sector clients to be satisfied of competence.

7.3.17 Estimates of the average cost of completing a PQQ process can vary significantly, but the administrative cost to suppliers is undoubtedly substantial. The Scottish Building Federation (SBF) conducted a Major Contractors Survey in June 2013 which showed on average that major contractors are spending almost £1000 per £1 million of public contract value. Anecdotal evidence gathered by SBF also found that an average of 15 PQQs are submitted per public contract awarded. There are also significant costs to the client in evaluating PQQs. Clearly further evidence would be helpful in this area to quantify properly the cost to the public purse but from the findings of this limited sample size and from anecdotal evidence given to us, it is clear that a large amount of time and money is being expended on the PQQ process both by clients and contractors. This adds further weight to the need for establishing a better way to manage the process and its considerable related costs.

7.3.18 The PQQ is supposed to ensure that only eligible bidders with the requisite financial and technical capacity and capability are invited to proceed to the tendering stage. However, many companies are now avoiding bidding for work in sectors that use PQQ processes as they cannot afford to invest the initial required outlay with little chance of being successful.

7.3.19 PQQ (and ITT) stages can place unnecessary, disproportionate and over-prescriptive qualifying barriers in the way of SMEs. These barriers not only restrict access to work, but may in turn reduce the available pool of expertise for some public sector construction projects by narrowing companies' portfolios of work.

7.3.20 Stakeholders have commented to us that what helps companies to progress past the PQQ stage is often not delivered when works are finally awarded, and so careful consideration of the requirements of a PQQ and monitoring of their delivery needs to be undertaken to ensure a continued fairness from start to finish in the process.

7.3.21 Work has been ongoing for some time by SPCD, in conjunction with industry and other public sector representatives, to develop a standard PQQ and this has recently been launched and made available through PCS Tender. The standard PQQ allows procuring authorities to select from a defined library of question sets grouped around standard themes such as economic and financial standing and quality management, and reflect the PAS 91:2013<sup>35</sup> standard.

7.3.22 The intention is that the PQQ should be built from this standard base of information in a way which is proportionate and relevant, rather than including all the questions which could possibly be thought of. The small number of mandatory questions required by PAS 91 are highlighted in the standard PQQ and an attempt should be made to keep other questions to the absolute minimum needed. The ongoing application of this principle in practice should be monitored and reviewed.

7.3.23 There is also recognition that requirements differ for contractor and consultancy services. The development of improved functionality for consultancy services is recommended and linkages should be made between SPCD and key representative bodies such as the Royal Incorporation of Architects in Scotland (RIAS) and the Royal Institution of Chartered Surveyors (RICS) to improve the applicability of the current library of questions for projects relevant to their professions. This has already proved to be effective for civil engineering contractors with the Civil Engineering Contractors Association (CECA) Scotland having been at the forefront of working with the Scottish Government to improve and develop the standard PQQ.

7.3.24 Suppliers can choose to provide responses to all potential questions at one time, or simply to provide responses as the various questions are asked in different PQQ exercises in which they are participating. Once a response has been provided, it is stored on the standard PQQ system, and when next responding to a PQQ, suppliers need then only to review their previous responses to ensure their currency, and answer any project-specific questions.

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<sup>35</sup> PAS 91:2013 is a free Publicly Available Specification (PAS) providing a set of questions to be asked by buyers of potential suppliers to enable pre-qualification for construction projects. Its development was sponsored by the Department for Business, Innovation and Skills, and was with the objective of streamlining and reducing the cost of pre-qualification in construction procurement processes.

7.3.25 Our recommendation is that the standard PQQ is used by all public sector authorities and RSLs, if including a PQQ stage as part of their procurement process. We do, however, recognise that the standard PQQ requires continual further refinement to be made even more suitable for construction usage once embedded and operating. This could include linking to recognised accreditation schemes and improving the process for gathering and storing references - referee fatigue being an issue which can stop businesses qualifying for opportunities to tender. In implementing any such further development, however, caution would need to be exercised to ensure that firms are not forced into joining expensive accreditation schemes in order to compete.

#### 7.3.26 Recommendations:

**a) Additional guidance for the public sector should be developed to ensure that the standard PQQ is used in a way which is proportionate and relevant to the needs of construction procurement, and practices monitored to ensure that this principle is achieved. The standard PQQ should continue to be refined and, where a pre-qualification stage is being used, its use should be mandated.**

**b) SPCD, along with bodies such as RIAS and RICS, should work collaboratively to develop consultancy/specialist services suites of standard questions for the standard PQQ. Other requests for specialist suites of questions should also be considered and assessed by SPCD as they arise.**

#### Quick Quote

7.3.27 Below the threshold values from which the EU Directives apply, contracting authorities have greater latitude in how they award contracts, although they must still “follow a procedure leading to the award of the contract which is sufficient to enable open competition and meet the requirements of the principles of equal treatment, non-discrimination and transparency”.<sup>36</sup>

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<sup>36</sup> The Public Contracts (Scotland) Regulations 2012, (21)

7.3.28 Of course, the threshold above which the Regulations apply is significantly lower for consultancy services contracts than for works contracts<sup>37</sup> (if they are awarded separately from the main works contract).

7.3.29 Quick Quote currently operates as part of PCS to allow the procurer to select a smaller number of suppliers to price the work they require. Each organisation's use of Quick Quote varies, but current guidelines for central government recommend that it is used only for contracts worth less than £50,000. At a little over one per cent of the threshold above which the Public Contracts (Scotland) Regulations 2012 apply, we believe that this is far too low for works contracts.

7.3.30 Increasing the guideline limit for contracts awarded through Quick Quote would allow the number of bidders for construction work to be restricted and negate the need for a full PQQ and/or ITT process for a relatively small works contract. It would still allow the market to be tested albeit on a more limited basis.

7.3.31 The provisions of the Procurement Reform Bill proposed by the Scottish Government apply to works contracts worth at least £2 million, and to supplies and services contracts worth at least £50,000. These provisions include a requirement to advertise such contracts on Public Contracts Scotland. We would encourage public bodies to consider using Quick Quote for contracts which are worth less than these amounts, although each body will clearly still need to undertake an assessment of the potential benefits and risks of such an approach for any given contract.

7.3.32 Indeed, it is important that contracting authorities still satisfy themselves that they are being transparent and fair when operating a Quick Quote process, and that selection of those invited to quote should be subject to a transparent rigorous process which is regularly reviewed. Guidance should be developed to cover this change more fully and outline good practice.

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<sup>37</sup> The thresholds above which the regulations apply are set for a period of two years, and are based on thresholds set by the European Commission. For works contracts, the threshold is currently £4,348,350. For supplies and services, the threshold is £113,057 for contracts awarded by central government, and £173,934 for contracts awarded by other parts of the public sector.

### 7.3.33 Recommendations:

- a) **The use of Quick Quote should become the norm for works contracts worth less than £500,000, and public bodies should consider using Quick Quote for awarding construction-related contracts worth less than the proposed thresholds in the Procurement Reform Bill (£2 million for works and £50,000 for supplies and services).**
- b) **When using Quick Quote, public bodies should be able to demonstrate a clear audit trail to contract award, to ensure transparency and accountability.**

### PCS Tender

7.3.34 Many of the observations on PQQs could similarly be applied to the ITT stage. Disproportionate resources can be expended by both clients and suppliers at tender stage, depending on the procurement choices made by the client.

7.3.35 As with PQQs, the average cost of tender processes is also difficult to quantify, given the level of project specific detail required, and variances stemming from the procurement approach being pursued. CECA estimates, however, that for a contract of approximately £4 million in value, the average cost of tendering is approximately £9,000 if the client has designed the project, or £18,000 if the contract is design and build. And on top of this is the potential PQQ cost already incurred. The Scottish Building Federation estimated recently that once shortlisted for a contract, contractors spend an average of almost £3,700 per £1 million of contract value to complete the procurement process<sup>38</sup>, although this is based on a limited sample. We have not attempted to conduct our own survey of this point, but we accept that it is clearly an issue of concern to industry.

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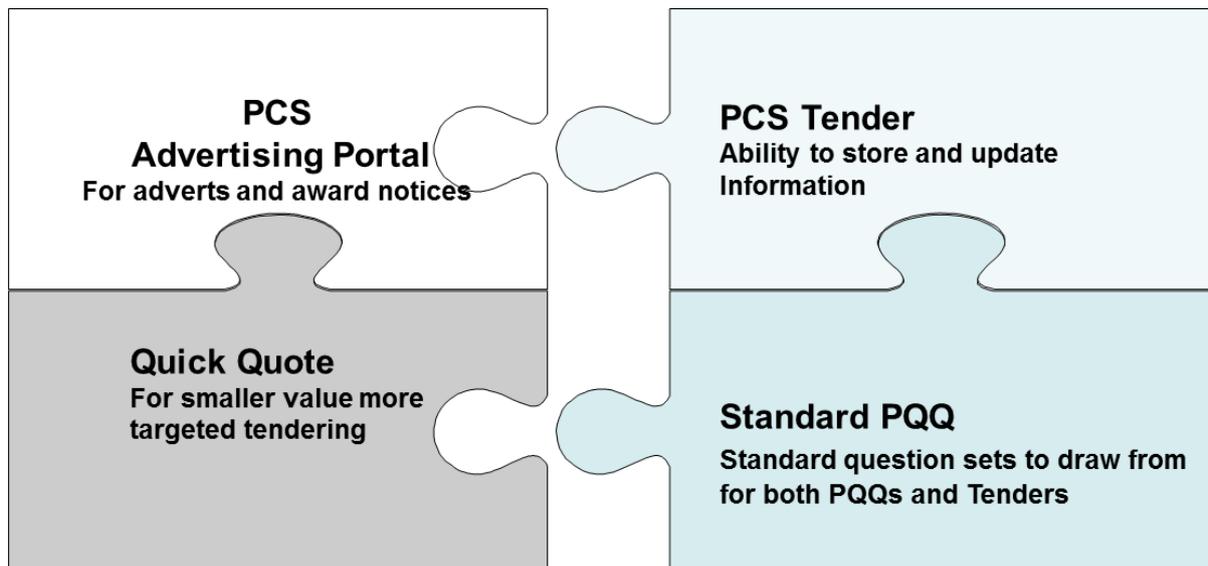
<sup>38</sup> Major Contracts Survey, Scottish Building Federation, July 2013

7.3.36 Continuing in the vein of ensuring consistency of approach we see great value in using the PCS Tender functionality to ensure that the tendering phase of procurement is also mandated through the use of PCS Tender. This would ensure end to end coverage of the procurement process through one free, central, publicly available portal - PCS. The scope for using standardised question sets for tender procedures along the lines of the standard PQQ should also be promoted.

### 7.3.37 Recommendation

**The use of PCS Tender should be mandatory for creating ITTs, using standard question sets as the basis, and submitting tender returns – whether individual contracts or the establishment of frameworks.**

7.3.38 The elements discussed above relating to Public Contracts Scotland can be illustrated as follows:



## **8. Sustainable procurement, innovation and emerging technologies**

### **8.1 Overview**

8.1.1 Economic, environmental and social sustainability are interlinked, and we see a future where these three strands are systematically afforded appropriate priority in construction procurement decisions.

8.1.2 The Scottish Government defines sustainable procurement as:

“a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis and generates benefits, not only for the organisation but also to society, the economy and the environment.”<sup>39</sup>

8.1.3 The Scottish public sector is in the process of adopting a consistent approach to sustainable public procurement based on the United Nations Environment Programme “Marrakech Task Force”<sup>40</sup> approach to accelerate a shift towards sustainable consumption and production. There is currently a project underway to embed this approach into procurement policy strategy and systems.

8.1.4 The “Marrakech Task Force” approach encourages organisations to review systematically the risks and opportunities related to their procurement spend and then to progress these through the procurement process.

8.1.5 We have highlighted at various points within this report the impacts of both the Scottish public sector construction spend and the Scottish construction sector on the Scottish economy.

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<sup>39</sup> The Scottish Sustainable Procurement Action Plan, The Scottish Government, 2009

<sup>40</sup> The Marrakech Task Force was launched in 2003 in response to the Johannesburg Plan of Implementation

8.1.6 Economic and social impacts range from support for local economies through the use of local contractors and consultants; the ancillary economic activity generated by construction spend; training opportunities which lead to permanent work opportunities or further learning; and, of course, the impact that high quality construction projects can have on improving and encouraging economic confidence in communities. Positive impacts can be achieved through the provision of a lasting resource which enables communities to interact and function better and have a sense of place<sup>41</sup>. When procured properly construction can also help to deliver against the preventative spend agenda and support social stability.

8.1.7 Although wider than the construction agenda, the UK Government recognises the links between procurement and place, and said in 2010:

“Innovative procurement can support wider economic growth and inclusion objectives in places as well as driving value for money, for example, supporting innovation, sustainability, skills and SME and third sector organisations.”<sup>42</sup>

8.1.8 Design-led procurement can also help to maximise sustainability through ensuring flexibility and adaptability of use and increasing the durability and longevity of the design solution. Sustainable resourcing of durable materials can contribute to improved performance and reduced environmental impact.

8.1.9 The Egan report set out a vision for innovation and technological change within the construction sector. This report was written around 15 years ago, and yet limited progress appears to have been made towards its objectives.

8.1.10 In order to start addressing this issue, a range of approaches should be better implemented, measured and monitored on a more consistent basis within public sector construction. Industry also has an important part to play as we set out in chapter 10.

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<sup>41</sup> Creating Places: A policy statement on architecture and place for Scotland, Scottish Government, 2013 highlighted the importance of place building (considering it to comprise: “the environment in which we live; the people that inhabit these spaces; and the quality of life that comes from the interaction of people and their surroundings), as outlined in Designing Places: A policy statement for Scotland, Scottish Government, 2010

<sup>42</sup> Total Place: A whole area approach to public services, 4.32, HM Treasury and Department for Communities and Local Government, 2010

## 8.2 Social benefits

8.2.1 Following on from the publication of the Scottish Government's Community Benefits in Public Procurement Report and accompanying guidance, social benefits are commonly referred to as "community benefits" in the Scottish public sector.

8.2.2 Over the course of our review, the terms "community benefits" and "apprenticeships" have often been used interchangeably. Community benefits, however, can be much broader than just the provision of apprenticeships and jobs, and can range from the provision of training, work experience, educational and engagement opportunities for local communities, through to the physical provision of additional community facilities and environmental improvements.

8.2.3 Authorities vary in how prescriptive they are about their requirements for community benefits, leading to differing practices when it comes to weighting and scoring. In part this stems from varying levels of comfort amongst different bodies with their ability to assess this objectively, as required by law.

8.2.4 Contractual inclusion of community benefit clauses also varies, with some clients leaving them as additional, less formal aspects of delivery. This approach, however, goes against best practice guidance:

"In order to form part of the criteria according to which contracts are awarded, community benefit clauses must be included as a core part of the contract specification. Once a decision has been taken to use Community Benefit clauses, they should be included at all stages of the procurement process from business case to contract implementation and monitoring; Organisations must set firm and realistic expectations in terms of their requirements. These must be precise to facilitate implementation and proportionate monitoring of the clauses."<sup>43</sup>

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<sup>43</sup> Community Benefits in Public Procurement - A Report Demonstrating the Methodology for Including Targeted Recruitment and Training Clauses in Public Sector Contracts by Richard MacFarlane and Mark Cook, Anthony Collins Solicitors, 2008

8.2.5 Monitoring and measurement of actual delivery of community benefits and the use of punitive measures for non-delivery - where community benefits elements have been scored and have played a key part in awarding a contract - is crucial. KPIs should be developed and clients must be rigorous in ensuring that promises made at ITT stage are fulfilled and that if they are not, then appropriate consequences follow. This not only protects the client from challenge but ensures realistic target-setting, and a level playing field for those tendering for work.

8.2.6 Stakeholders have raised questions with us as to the reasonableness and deliverability of some community benefits clauses. For example, a twelve month, £2 million construction contract cannot in itself be expected to deliver ten new apprenticeships capable of being sustained over the long term.

8.2.7 We strongly believe that, in relation to apprenticeships, more weight has to be given to the importance of completion of apprenticeships and sustaining existing employment within the industry, as well as the creation of new apprenticeships, where appropriate. Expectations of clients need to be proportionate to the size of the contract.

8.2.8 The Scottish Government has indicated its support for exploring shared apprenticeship models, which may provide a vehicle for promoting the employment of apprentices on smaller contracts. The need for better sharing of apprenticeships whether through client or supplier collaboration is recognised in a University of Glasgow report commissioned by Homes for Scotland<sup>44</sup>. This report also sets out some of the difficulties with such models which need to be addressed if their use is to become viable. A variety of other models and practices currently exist, with some local authorities such as Falkirk Council taking a key role in providing and sustaining apprenticeships, while in other areas industry is taking the lead.

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<sup>44</sup> Shared Apprenticeships for Home Building: A Scoping Study, Alan McGregor and Victoria Sutherland, University of Glasgow Training and Employment Research Unit, March 2013

### 8.2.9 Recommendations:

**Good, detailed, community benefits guidance exists currently on the Scottish Government website, but it is lengthy and should be reviewed and integrated within a wider Construction Procurement Journey. This guidance should include:**

- a) The requirement that contracting authorities should have a clear strategic understanding of what they want community benefits to deliver through their public procurement for the sustainability of the Scottish and local economy and the community within which the project is being delivered. The public body should set out its strategic objective and ask the contractor to set out in its tender how it will meet that objective.**
  
- b) Guidance to contractors to help them to design and deliver appropriate community benefits.**
  
- c) Guidance to contracting authorities to assist an open consideration of community benefit proposals at ITT stage.**
  
- d) The promotion of continuity and completion of apprenticeships. One means of doing this may be through encouraging the public sector and industry to work together to develop a shared apprenticeship model that refocuses the emphasis on the completion of apprenticeships and the practicability of such models should be investigated.**
  
- e) Monitoring by public sector clients of performance in relation to community benefits delivery, and use of that performance monitoring information as part of overall performance assessment for future contracts whether through frameworks or open processes. This could be done as part of a suite of KPIs.**

### **8.3 Economic benefits**

8.3.1 It is difficult to distinguish the individual aspects that make up sustainable procurement. In many cases economic benefits will be derived from the activities and recommendations described earlier in this report, and in particular, the power of public spending to benefit the Scottish economy. Use of social or community benefits clauses can bring economic benefit through training and employment opportunities and through opening up the supply chain; an example would be the use of Forth Replacement Crossing contracts. Economic benefits may also accrue through environmental benefits, for example, the benefits of more energy efficient materials and buildings or the resource efficiency that whole life costing would generate.

### **8.4 Environmental benefits**

8.4.1 Scotland has set itself some of the most challenging carbon reduction targets in Europe. Promotion of environmental sustainability in public construction currently manifests itself in a number of ways. For example: the development of greener homes is being supported through the Scottish Government Greener Homes Innovation Scheme and the production of a Greener Homes Prospectus, whilst the recently published Sustainable Housing Strategy for Scotland<sup>45</sup> also reinforces these messages for both the public and private sector; and the five hubCos' performance in sustainability is measured by KPIs monitored by their Territory Partnering Boards. Underpinning other work, there is continuing improvement in energy standards required under building regulations, guided by the recommendations of the Sullivan Report<sup>46</sup>. An update on specific topics within that report is due later in 2013.

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<sup>45</sup> Scotland's Sustainable Housing Strategy, The Scottish Government, 2013

<sup>46</sup> A low carbon building standards strategy for Scotland, 2007

8.4.2 A range of existing energy standards are currently being used by the public sector when specifying their requirements, such as BREEAM<sup>47</sup>, EcoHomes<sup>48</sup>, Standard Assessment Procedure (SAP)<sup>49</sup>, and the National Home Energy Rating. It should be noted that the Energy Efficiency Directive provides a range of mandatory and voluntary provisions to drive improved energy efficiency in the public estate.

8.4.3 Sustainability through design can be achieved in number of ways - such as maximising thermal efficiency, reducing carbon emissions, reducing floor area requirements through clever use of space, or considering refurbishment rather than new build. We have already stressed the strong importance of design in section 6.2 and this is reinforced in the Scottish Government's recently published architectural policy statement which states:

“Communities and places benefit from investment decisions that consider all impacts – societal, environmental as well as economic. Decisions should prioritise long-term benefits. The public sector should set an example by ensuring high design standards are adhered to in public procurement. Low carbon design and planning should be a priority. Project clients, commissioners, designers and approvers should encourage design innovation and take advantage of locally sourced materials to facilitate sustainable development. A ‘re-use not replace’ approach should be considered first when dealing with our existing built environment.”<sup>50</sup>

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<sup>47</sup> BREEAM is the Building Research Establishment's Environmental Assessment Method and rating system for buildings

<sup>48</sup> ECOHomes is the domestic version of BREEAM.

<sup>49</sup> SAP is the methodology used by the Department of Energy & Climate Change to assess and compare the energy and environmental performance of dwellings.

<sup>50</sup> Creating Places: a policy statement on architecture and place for Scotland, The Scottish Government, June 2013

## CASE STUDY – PLOT RENEWAL

The Institute for Sustainable Construction at Edinburgh Napier University has demonstrated an efficient, economic, socially and environmentally sustainable method of bringing old housing stock back into occupation with long term benefits. The university, in collaboration with a local housebuilder, Sharp Homes, and support from Fife Council building standards, has piloted a concept of “plot-renewal”.

Plot-renewal fully encompasses urban regeneration by community engagement and local job creation whilst providing energy efficient homes and sustainable community benefits. Plot-renewal is the deconstruction of an existing vacant derelict dwelling back to its foundations, and the construction of a new dwelling, making use of all the existing foundations, services and street infrastructure. Plot-renewal targets streets earmarked for demolition or refurbishment where to refurbish existing dwellings to tolerable housing standards simply does not provide the best long-term solution. In addition, plot renewal can allow alternative sizes of accommodation to be provided, thus delivering more homes within the same footprint to meet the local housing needs.

Five new mid-market rent homes were delivered for Ore Valley Enterprises, a subsidiary of Ore Valley Housing Association in Lochore, Fife, at a development cost of £65,000 per unit, with no government subsidies being used. This compares favourably to the average costs being sustained in many other affordable housing projects. In addition 22 new homes have been leased by Ore Valley Enterprises from the developer on a 20 year lease for onward let to tenants on a mid-market rental basis. The development of these 27 homes was carried out in five months, as no groundworks were required, thereby also reducing costs and improving resource efficiency. Further cost savings were achieved by recycling materials on site and the re-use of the street infrastructure. An independent surveyor valued the 2/3/4 bedroom homes at £80,000/ £99,000/ £135,000 respectively.

The occupied dwellings are now subject to a monitoring project by the Institute for Sustainable Construction, the results of which will be published later in 2013.

Although plot-renewal will only be appropriate in a limited number of scenarios, it is a method which for achievement of best value for money should be considered where housing stock requires to be regenerated.

8.4.4 New, more sustainable materials and components are being developed all the time, as is an awareness of renewable and locally sourced materials and technologies which are economical in both upfront cost and whole life cost analysis. This report will not be promoting any particular technologies but there is a clear need for experience and learning to be better shared and this should be an area of focus. The development and promotion of Scottish timber is one such example where continued sharing of information can help product development.

8.4.5 Waste management is another area where real measurable improvements can be achieved. Industry has a key role to play in improving on-site practices, as have clients in demanding good performance. Good progress is being made through UK wide initiatives such as “Halving Waste to Landfill” which is promoted in Scotland by Zero Waste Scotland. The Scottish Environment Protection Agency reported that construction and demolition waste dropped from 8.03 million tonnes in 2006 to 7.47 million tonnes in 2010. However, construction still accounted for 44 per cent of all controlled waste generated in Scotland in 2010 and it is still the largest source of waste in both Scotland and the UK.<sup>51</sup> Continued effort in this area has the potential to save money as well as the environment and contribute to other targets, such as for recycling. We are aware that the Scottish Government is working in partnership with Zero Waste Scotland and other key partners to develop E-learning Sustainable Construction Tools to help disseminate Scottish Government policy and embed best practice in this area. Contracting authorities have a responsibility and opportunity to promote better waste management through their construction contracts and should strive to do so. In paragraph 8.6.4, we comment on the potential of Building Information Modelling to help to reduce waste.

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<sup>51</sup> Waste Data Digest 12: Key facts and trends, 2012, Scottish Environment Protection Agency

8.4.6 The higher capital cost of some of the greener standards and approaches, such as BREEAM or the voluntary higher levels defined within section 7 (sustainability) of the Scottish Building Standards, is often stated as the major barrier to their wider adoption. At a time of such significant pressure on capital budgets, we can understand such concerns. However, greater linkage of capital and revenue funding considerations in the context of the whole-life cost of a project, whether a house, a hospital or a school, would provide better information on the true overall cost of sustainable approaches by focussing on the subsequent savings in revenue expenditure as well as the upfront capital costs. This was also recognised by the Westminster Sustainable Business Forum.<sup>52</sup>

8.4.7 Bringing this together in a single vision for public sector construction procurement is a challenge in view of the spread of Scottish Government departments with an interest in or responsibility for the topic. The enhanced construction procurement policy function should play a key role in promoting a more coherent joined up approach to sustainability for public sector construction.

## **8.5 Innovation**

8.5.1 As set out above, previous reports such as the Egan report and the Latham<sup>53</sup> report have promoted innovation in modern methods of construction and partnering approaches to contracts. Public sector clients and industry need to be more open to new products and techniques. The sharing of experiences and outcomes needs to become common practice.

8.5.2 One example is off-site manufacture where there are potentially significant gains for highly replicable products for use in types of build such as social housing. There have been some examples of this being trialled, but to date these have been sporadic and learnings of a less positive nature often not shared openly.

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<sup>52</sup> Costing the Future: Securing value for money through sustainable procurement – The final report of the Westminster Sustainable Business Forum's inquiry into sustainability in public procurement, 2008

<sup>53</sup> Constructing the Team: Final Report of the Government/Industry Review of Procurement and Contractual Arrangements in the UK Construction Industry, Sir Michael Latham, 1994

8.5.3 Modern methods of construction are not limited to any given structure and can be employed for housing, health, education, commercial and industrial properties. Perhaps the most appropriate sector for off-site manufacturing is the housing sector, where the volume is such that economies of scale can be realised in the factory environment and better value for money achieved. Sustainable construction is achievable in the factory environment and can consider low carbon technologies and energy saving techniques to produce housing compliant with building standards requirements. There are a limited number of companies who are actively pursuing this agenda but we know of some who can see the value both now and for the future of investing in such factory capacity to feed their construction arms and clients requirements in an efficient, cost-effective and sustainable way.

8.5.4 Standardisation, in any form, however, appears to strike fear into the heart of many who feel that it has been the cause of some of the quality issues they have spent the last 30-40 years resolving. This need not be the case; for example, the use of standard components and off-site manufacturing techniques does not mean that every social house in Scotland has to look the same, nor that quality or specification have to be compromised. Indeed, it can be about optimising the quality and specification.

#### CASE STUDY – FIFE HOUSING INNOVATION SHOWCASE

The recent Fife Housing Innovation Showcase in Dunfermline has considerable potential for enabling rapid progress in innovative techniques.

The project was grant funded with £2 million from the Scottish Government, through its Affordable Housing budget, and is a partnership between Kingdom Housing Association & Fife Council, with support from Fife Construction Forum & Green Business Fife and comprises 27 new houses on a site in Dunfermline based on ten different designs and using innovative construction methods, to demonstrate the benefits of these systems being used more widely in mainstream affordable housing. Comprehensive monitoring is ensuring that the innovative construction methods and products being used will be properly evaluated and then assessed for future wider applicability.

8.5.5 More sharing of hard data and outcomes, and the wider use and promotion of publications such as the Scottish Government's Greener Homes Prospectus will help to promote information exchange and refine practices.

8.5.6 The Scottish Government has a crucial role to play in linking with public sector clients to encourage better sharing of best practice across the public construction sector. This sharing of practice should also draw on crucial lessons learned from approaches which have been less successful.

8.5.7 We understand that a funding application is being made by Construction Scotland to the Scottish Funding Council to establish a Scottish construction innovation centre. In our view such a centre would allow more rapid progress to be made by the construction industry in technology and innovation on a collaborative basis. Scottish companies currently have to go outwith Scotland to carry out product testing. The bid is competing against other projects, but, if successful, will become an important enabler of progress in this critical area for the construction sector in Scotland.

**8.5.8 Recommendations:**

**a) The Scottish Government should build on some good work by RSLs and others by better incentivising greener construction and promoting modern methods of construction and providing better advice and guidance on renewables technologies.**

**b) Construction guidance should be aligned to the wider sustainable procurement agenda in recognition of the potential for construction to demonstrate the benefits of good procurement and should take account of the findings of the Sullivan panel when they are published.**

**c) The Scottish Government should promote a more coherent joined up approach to sustainability for public sector construction.**

## 8.6 Building Information Modelling (BIM)

8.6.1 Building information modelling (BIM) is defined by different people in different ways. The UK BIM Task Group starts by describing what it isn't before describing what it is:

“It's not just 3D CAD

It's not just a new technology application

It's not next generation, it's here and now!

BIM is essentially value creating collaboration through the entire life-cycle of an asset, underpinned by the creation, collation and exchange of shared 3D models and intelligent, structured data attached to them”.<sup>54</sup>

8.6.2 BIM offers the opportunity to adopt a new collaborative approach which has the potential to achieve more efficient and effective ways of working through all stages of the construction project life-cycle. It is also considered to be a potential driver for growth as outlined in the Saxon report<sup>55</sup>.

8.6.3 BIM should be employed to improve quality and efficiency to meet the aims of the brief. In this regard, the quality of briefing and monitoring of the design process are of particular importance within BIM projects.

8.6.4 By achieving more certainty in the design before construction starts, BIM brings other advantages in reducing waste and in the realisation of outcomes for environmental sustainability. BIM targets for carbon reduction and building performance in use can be prototyped and appraised with higher levels of certainty using BIM techniques. A number of professional practices and Scottish further and higher education institutions are already understood to be active in this field.

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<sup>54</sup> BIM Task Group website, Frequently Asked Questions

<sup>55</sup> Growth through BIM, Richard G Saxon MBE, Construction Industry Council, April 2013

8.6.5 The UK Government is already well down the road of adopting BIM and has set a target that all “in scope” central government procurements (both new build and refurbishment; irrespective of project value; and explicitly with no trigger threshold) should achieve BIM level 2 compliance by 2016. This level of compliance is defined by the BIM Task Group as “a series of domain specific models (e.g. architectural, structural, services etc.) which provide a common data environment to share data and information defined by PAS1192:2<sup>56</sup> and are deliverable in COBie UK 2012”<sup>57</sup>.

8.6.6 Professor David Philp, Head of BIM for the HM Government BIM Task Group comments that “starting with the Ministry of Justice we have over twenty projects using BIM processes and the early projects such as Cookham Wood Young Offenders Institution announced a 20 per cent reduction in capital cost.”

8.6.7 Wales and Northern Ireland are already committing to adoption of level two and other European countries such as Finland are at the forefront. On 18th December 2012 the EU voted to table a set of proposals as part of the review of the existing EU Public Procurement Directive which will encourage the progressive use of BIM in public works contracts across member states. The proposed use of BIM in public works largely echoes current UK policy while not imposing strict implementation requirements on national legislation.

8.6.8 We do not deny the challenge that this may offer for both public sector and industry but we believe that the savings being suggested both initially and throughout the life cycle of the structure make a compelling case for its adoption. In view of the development of BIM internationally and in the rest of the UK, the Scottish public sector and Scottish contractors risk being left behind if early adoption is not mandated.

8.6.9 RICS recognises this in its “What is BIM” paper, March 2012, in which Steve Pittard states that:

“BIM is not going to go away, and so we must, therefore, learn to adapt and embrace or risk the threat of losing ground to others.”

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<sup>56</sup> Publicly available specification for information management for the capital/delivery phase of construction projects using Building Information Modelling

<sup>57</sup> COBie is a formal scheme that helps organise information about new and existing facilities

8.6.10 Through discussions with UK Government BIM leaders, who have shared their experiences of implementation with us, we believe that a realistic timescale for adopting BIM level 2 in Scotland would be from April 2017. Some of the background documents are already in place - PAS1192.2 has already been developed, and the next step, PAS1192.3 is in development – which would help to kickstart implementation in Scotland.

8.6.11 To implement BIM in Scotland successfully, the Scottish Government will need to identify resources to drive forward its introduction across the public sector. Many practical questions around implementation will need to be answered and communities of interest developed, building on existing BIM structures in Scotland, such as the BIM regional hub, as well as learning lessons from the UK BIM Task Group. The possible impact on planning and building control frameworks will also need to be considered. There is already Scottish representation on the Construction Industry Council's BIM4SMEs group and strategies to help support this part of the industry should be developed collaboratively. We also know of some major Scottish public contracts where BIM is already being used such as the Southern General Hospital in Glasgow and the Western General in Edinburgh and the experiences and lessons learned from these should be built on to help drive forward successful implementation.

8.6.12 We are strongly of the view that resources expended on this approach can result in significant savings and that it is crucial to establish a current baseline and evaluation process in order that these savings can be properly quantified over time.

8.6.13 **Recommendation:**

**The use of Building Information Modelling (BIM) should be introduced in central government with a view to encouraging its adoption across the entire public sector. The objective should be that, where appropriate, construction projects across the public sector in Scotland adopt a BIM level 2 approach by April 2017.**

8.6.14 A programme plan for BIM implementation by 2017 should be developed, along with guidelines and advice on the use of BIM. Suitable trial projects should be identified ahead of the 2017 target date and their management co-ordinated centrally.

8.6.15 When deciding if BIM will add value to a project, public sector clients should undertake an assessment of the likely return on investment from its use. This will not necessarily correlate directly with project value but may relate more to project complexity and longer-term functionality.

## **9. Data as an enabler of reform**

### **9.1 Overview**

9.1.1 Strategic policy decisions cannot be taken properly, nor direction set, without appropriate collation and analysis of public sector construction spend. Public sector construction spending is also an important economic lever, and so it is key that government knows how, where, when and on what this money is being spent to be able to measure and evaluate its full impact.

9.1.2 We note in chapter 5 the steps that have been taken to improve visibility of future construction activity for industry in the shape of the Infrastructure Investment Plan and our recommendations for improvements to pipeline information as the current approach to data collection is inconsistent and does not promote shared strategic thinking or decision-making on the use of that construction spend to achieve the greatest impact and benefit for Scotland.

9.1.3 There is also a lack of comprehensive collated data for public sector construction spend in Scotland. This means that any assessment of how efficiently and effectively that spend as a whole is being invested is extremely difficult to make.

9.1.4 The use of existing and improved data feeds into the delivery of many of our recommendations throughout the report.

9.1.5 In outlining our views on data, we are aware that careful consideration should be given to the usefulness and comparability of any data to be gathered and collated as well as any commercial sensitivities. Its purpose and value must be clear both at a disaggregate and aggregate level. Our vision is that the power of good quality data should be used as an enabler of reform both at strategic and local delivery levels.

## **9.2 Management information**

9.2.1 A recent evidence review undertaken by the Scottish Government as part of the wider Procurement Reform Bill process concluded that:

“Drawing on the evidence from across the EU and the information available from current systems, there is a need to gather more data in a consistent and comparable manner across the public sector and the need to mandate the collection of that data. Progress has been made in the creation of different systems but more could be done to strengthen those systems to allow for the more systematic collection of reliable data, which would allow for a more detailed picture of procurement reform progress, the procurement landscape and the performance of organisations engaged in it.”<sup>58</sup>

9.2.2 This holds true for the data we believe should be consistently gathered and analysed by the public sector in their management of construction projects and programmes. Such information would also provide evidence to support and measure policy development and implementation.

9.2.3 Our stakeholder consultations and evidence gathering as part of this review have highlighted areas within the public sector where good management information is currently being monitored and used to inform future procurement but it has also shown the varying stages that public sector partners are starting from. The following areas are the component parts which we believe all public sector partners should address when looking at data collection and usage.

## **9.3 Baseline data**

9.3.1 Baseline data provides a point of reference to measure both existing and future performance and can be used as a basis for setting benchmarks and metrics. Establishing a baseline of current levels of performance should also enable the realistic appraisal of procurement approaches currently being used.

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<sup>58</sup> Public Procurement Reform – a rapid evidence review, Dr Vivian Leacock, Scottish Government, August 2013

9.3.2 An important element in building that baseline is looking back and learning from experience. Audit Scotland's January 2011 "Management of the Scottish Government's capital investment programme" report recommended that the Scottish Government should develop standard criteria for inclusion in post project evaluations and ensure that they are completed for every major capital project and lessons learned are shared across all relevant public bodies. This was followed by their recent finding relating to local authorities which was that only 40 per cent of the projects they audited were delivered with the initial cost estimate<sup>59</sup>.

9.3.3 We see the need to establish a baseline position of performance in publicly funded construction projects and believe that such baseline data should include:

- How projects/programmes delivered against planned and agreed programme and cost.
- The contractual arrangements driving that performance – for example, was it a fixed price contract, target cost, cost reimbursable, with or without quantities, single stage, partnering, lump sum, cost plus? Did the contract type factor in the outcome?
- What quality standards were aspired to and then achieved?
- What was delivered against community benefit and sustainability targets?
- Identification of common major contractors.

9.3.4 In building such a baseline, data should be collected at key stages from inception to project completion to allow a full evaluation to be undertaken.

9.3.5 This would set the baseline for procuring organisations then to measure and challenge themselves against their own and, where relevant, others' performance and to challenge their approach to and expectations of future procurements. It would also allow the identification of opportunities to adopt an efficient and strategic approach to supplier relationship management across the public sector, building on the ideas set out in the UK Government's Construction Strategy, such as the use of strategic alignment agreements.

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<sup>59</sup> Major Capital Investment in Councils, Audit Scotland, March 2013

9.3.6 Consistency in the way this data is requested and recorded needs to recognise and be sensitive to sectoral nuances and contracting organisations' varying data collection starting points.

#### **9.4 Benchmarking, Metrics and Key Performance Indicators**

9.4.1 The performance of projects, programmes and indeed public bodies in relation to one another is facilitated by benchmarking, which is best achieved by common datasets and directly comparable indicators. Benchmarking, metrics and KPIs are currently used by many public sector organisations to assist their programme and project management processes but their scope, consistency and robustness varies - metrics being a numeric measure only whereas benchmarks and KPIs can be both numeric or qualitative. The objective of this data is to ensure value for money in the delivery of the specific asset but also to inform the most effective ways in which to make future investments. Once a baseline has been established, we see real value in benchmark performance measures being developed and used to inform future project evaluation and performance management. We believe that these should be developed on a sectoral basis first, with a view to collating and comparing more generically, where appropriate.

9.4.2 Such data would also identify opportunities for further information analysis and exchange to understand what might be driving benchmark statistics in both their and other procuring authorities and has the potential to be an efficiency driver by strengthening the public sector's ability to understand and challenge industry costs in an intelligent way.

9.4.3 This should eventually be extended to include ongoing data collection post-project delivery to allow fuller life-cycle costing considerations to be explored and used in future decision making whether on strategic capital and revenue budget requirements or in assessing individual project value for money.

9.4.4 This enhanced benchmarking data can then be used as a tool in business planning and new contract awards. The Chartered Institute of Public Finance and Accountancy recognises the importance of benchmarks:

“benchmarking offers a catalyst for driving efficiency, identifying new solutions that offer cost reductions and raising the performance of an organisation to the standards achieved by the best”<sup>60</sup>.

9.4.5 One such example of using data to inform future procurement comes from the Scottish Futures Trust. At a regional level data is gathered by the hubCos and SFT itself gathers data in respect of the Non Profit Distributing (“NPD”) programme which it runs. SFT has developed a set of metrics for the Schools for the Future programme and in non-schools projects it has developed a method for establishing an “intelligent benchmark” which is then used to set an affordability cap for new projects. The extensive work by SFT, National Services Scotland and some other authorities provides scope for the development of a consistent and transparent basis to build better performance management and delivery through the development of benchmarks, metrics and KPIs.

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<sup>60</sup> Better Benchmarking for High Performance, Chartered Institute for Public Finance and Accountancy, 2010

9.4.6 Other data is currently collected by public sector clients, but it is not always readily accessible, nor is it always maintained regularly; in a common format; or for a common purpose. An example of this is Scottish Government Housing Supply Division (HSD) which used to gather comprehensive data to be used in developing subsidy benchmarks and informing other policy decisions. In recent years, streamlining of the grant regime has meant that the detail of the data it has been able to draw on has been diminished. HSD still process Tender Returns for analysis and use in the Scottish Social Housing Tender Price Index but there is scope for some of that information to be used more widely in assessing value for money and shaping future affordable housing delivery as well as assessing what other data could be gathered to complement investment decisions. Scottish Government guidance notes that “all or a proportion of projects will be subject to post completion scheme review”.<sup>61</sup> Reinstatement, rationalisation and reinvigoration of these processes will help HSD in assessing the effectiveness of the procurement decisions they and their partners are taking and informing future procurements. This recommendation for HSD could similarly be applied to other areas of the public sector.

9.4.7 It is strongly recommended that monitoring and benchmarking data is strengthened by all public bodies to help increase market intelligence and better inform future policy and programme management. While we accept that some categories of construction expenditure are specialised, there may also be common elements which could usefully be compared to produce benchmark information and help develop KPIs. The potential to extend this to benchmarking against private sector performance should also be considered.

9.4.8 We believe that the conduit for sharing benchmark information across the public sector should be the enhanced construction procurement policy function within the Scottish Government, and that, where relevant and non-commercial, that benchmark information is published where possible. Initial work should focus on the SFT approach with a view to formulating a standard public sector approach.

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<sup>61</sup> Housing Supply Guidance Note 2012/06, Affordable Housing Supply Programme, Strategic Local Programmes 2012-2015

9.4.9 Good quality data should be used to identify what success looks like in the procurement of projects/programmes and the changes required to reflect good practice. Better data should also help in identifying areas where continuing to procure in isolation does not make sense.

## **9.5 Performance Management and Continuous Improvement**

9.5.1 Monitoring performance through the use of benchmarks and KPIs will assist clients better to understand, manage and analyse that performance and the factors influencing it.

9.5.2 That learning can then be used across public sector construction to improve practice, out-turn and outcomes and reap full value from public investment and the holy grail of becoming the often quoted “intelligent client” who is actively involved throughout the project in managing risks with the contractor should then become more achievable.

9.5.3 As a result, target setting and KPIs should be more informed and improved data fed straight back in to business planning stages for new projects to improve the reasonableness of assumptions and expectations when it comes to budget setting (cost), quality and timescales. Linkages can also be made across other areas of performance e.g. design, community benefits delivery, payment performance, whole life costing.

9.5.4 Transparency and accountability should also be strengthened as a more robust set of measures and challenges will be applied to construction investment decisions. By applying these principles not only at business plan, project appraisal and completion but also during the construction phase as outlined in section 6.9 on project assurance, outcomes can be improved in a more responsive way.

9.5.5 There is some work to be done in ensuring that these approaches are wholeheartedly adopted across the public sector as Audit Scotland's findings as part of their report on capital investment by local authorities bear out:

“...just over half of the 63 completed projects in our sample have been evaluated to assess whether they have delivered the intended benefits.”<sup>62</sup>

9.5.6 This builds on Audit Scotland's recommendation that:

“...public bodies should ensure that they carry out post-project evaluations within six months of project completion to determine whether projects have delivered, or are on course to deliver, the initial benefits intended. Evaluations should consider performance against cost, time and quality targets.”<sup>63</sup>

9.5.7 The principle of learning lessons from past experience, however, is already being embraced by some following the 2011 Audit Scotland report statement on the need to develop standard Learning Lessons criteria and ensure that evaluation is carried out on all projects and shared across public bodies.

9.5.8 The Scottish Government has adopted a central strategic role in facilitating, promoting and sharing lessons learned and has mandated the use of Learning Lessons for major investment projects. A pilot project with delivery bodies which have more mature Learning Lessons procedures in place, including Transport Scotland, the Scottish Funding Council and the health sector is currently underway. This feedback will be supplemented with assessments from a separate exercise, involving Gateway Review and Key Stage Reviews with key lessons learned being published in early 2014.

9.5.9 We recognise at various points within this report the importance of sharing lessons learned and see real value in actions in this regard taking cognisance of the work already underway through the Learning Lessons approach to ensure that continuous improvement is achieved.

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<sup>62</sup> Major Capital Investment in Councils, Audit Scotland, 2013

<sup>63</sup> Management of the Scottish Government's capital investment programme, Audit Scotland, 2011

#### 9.5.10 Recommendations:

**Action should be taken to ensure robust systems are in place to track all spending on construction by public authorities such that a complete analysis of annual public sector construction spend in Scotland can be easily available.**

**Sectoral records of project outturn costs, including what they were estimated to cost at business plan and contract award stages and actual cost on completion, should be developed and maintained so as to provide meaningful benchmark figures for the public sector in Scotland. These records should also record timescales and quality measures to enable a true assessment of performance delivery to be made.**

**Guidance should be developed on robust management information requirements and should cover baseline data, benchmarks, metrics and KPIs.**

**Project evaluation should be promoted and should build on the Learning Lessons Approach.**

## **10. What the industry needs to do**

### **10.1 Overview**

10.1.1 Throughout this report, we have signalled that we believe there are a number of areas where changes to the public sector's approach to procurement is only one element of what is needed to make a positive change.

10.1.2 We believe that some of the problems and issues which have been raised with us as we have spoken to stakeholders are, at least in part, of the industry's own making. Late payment down the supply chain, retentions abuse and suicide bidding are not problems which the public sector alone can resolve: industry must play a leading role.

10.1.3 The problem, however, is that the construction industry in Scotland is a vastly fragmented and complex landscape, which mirrors in many ways the myriad of different entities and professions which make it up.

10.1.4 And there are a great number of construction companies. Two-thirds of those employed in construction in Scotland work for small firms which employ fewer than 50 people, some 12 per cent work for medium-sized firms employing between 50-249 people, and 22 per cent for companies which have grown beyond the SME bracket<sup>64</sup>.

10.1.5 We have deliberately resisted being prescriptive in our recommendations in this chapter – choosing instead to highlight a number of challenges which we believe the industry must address. We have heard time and again that if industry is to change, it must be industry which owns and drives those changes.

10.1.6 Well, let this be the impetus. We have set out here a series of challenges to the industry – it is for the industry to step up, to organise itself, and to address these challenges.

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<sup>64</sup> Businesses in Scotland, 2012, Scottish Government, page 39

## 10.2 A cohesive voice

10.2.1 There are a great many separate bodies representing trade and professional groupings within the construction industry. These each have their own role and their own interests. We do not seek to downplay or undermine these bodies.

10.2.2 However, there is a clear need for these bodies to come together to agree a common agenda, such as the one we have suggested here. This is a long-recognised problem, most recently in Construction Scotland's Industry Strategy:

“Representation of the industry is extremely fragmented. Over 100 separate membership organisations are involved in engagement with government, each representing specific parts of the industry. None of these bodies currently represent the industry as a whole. This fragmentation puts the construction industry at an immediate disadvantage as it competes with other sectors to get its key messages heard, recognised and acted upon by government” .<sup>65</sup>

10.2.3 Accordingly, the first step will be to seek agreement on how the industry can best co-ordinate its efforts. We believe that the newly formed Industry Leadership Group, under the auspices of Construction Scotland may facilitate this. For it to do so effectively, however, its membership may need amended to ensure sufficient buy-in from across the industry.

10.2.4 We urge industry to commit earnestly to support this Industry Leadership Group – it is already up and running, has the backing of Scottish Enterprise, and if it can be made to work, is potentially a very powerful voice for industry, as well as driving force within it.

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<sup>65</sup> Building for the future: The Scottish construction industry's strategy 2013-2016

#### 10.2.5 Recommendation:

**The Chief Construction Adviser should hold talks with the Industry Leadership Group and with other trade and professional bodies and representative institutions to agree on how the industry should co-ordinate its efforts.**

### 10.3 Treating each other fairly

10.3.1 We have made suggestions in section 6.8 as to some of the steps which the public sector can take to improve payment down the supply chain.

10.3.2 But this, like so many other issues, is one which is primarily of industry's own making. The contractual and working relationships between two private firms may well be influenced by the relationship with the client, but ultimately are a reflection of the way in which those two firms choose to treat each other.

10.3.3 We both have experience of a number of different industries – some of which see no shortage of machismo. Never, however, have we come across an industry which is as confrontational as the construction industry, or indeed, one in which there appears to be so little professional respect between firms.

10.3.4 We understand that these are tough times, and, as we recognise in section 6.8, everyone is under a great deal of pressure. But some of the behaviours which occur in the construction industry – especially as they relate to payment (both payment terms and valuation) and retention abuse – are particularly corrosive.

10.3.5 We are not naïve enough to believe that things can change overnight. But neither do we see any reasonable justification for firms not replicating the fair treatment which they rightfully demand from their public sector clients in their dealings with other firms.

### 10.3.6 Recommendations:

**The Fair Payment Charter should be promoted more widely as the norm within the construction industry. The industry should consider how it can collectively make late payment of suppliers an unacceptable practice.**

**When the public sector adopts good practice – such as might relate, for example, to the appropriate use of retentions, requirements for insurance or the use without alteration of appropriate standard forms of contract – industry should replicate this throughout the supply chain.**

10.3.7 Another issue of fairness, which has been much in the news recently, is that of blacklisting of construction workers. Earlier this year, the Minister for Transport and Veterans told the Scottish Parliament that:

“The Scottish Government is totally opposed to blacklisting or the compiling of a blacklist. We expect companies that are awarded public contracts maintain high standards of business and professional conduct”<sup>66</sup>.

10.3.8 We concur with this statement – there is no place for blacklisting in the construction industry, and we understand that the proposals contained in the Procurement Reform Bill will provide powers to tackle companies which do not comply with their legal obligations, including on blacklisting and employment law.

## 10.4 Bidding sustainably

10.4.1 Abnormally low tenders – or ‘suicide bids’ – can be a big problem for everyone. Firms submitting such tenders risk their financial health, maybe even their survival, and clients risk being faced with either a contractor which submits a multitude of claims to try to recoup funds, or a contractor which is unable to complete the work – or both.

10.4.2 And yet, as we discussed in chapter 7, this issue is notoriously difficult for public sector clients to deal with.

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<sup>66</sup> From the answer to written parliamentary question S4W-15076, 29 May 2013

10.4.3 We accept that there are any number of reasons why a firm might take a commercial decision to submit a lower than usual tender for a given piece of work – it may have a short gap in its order book that it would rather fill with something, than have its workforce sit idle, for example; or it might be trying to break into a particular sector and recognise that without a strong history it has to compete harder on price. Ultimately, so long as such bidders are acting within the law, and can actually deliver those contracts at the agreed price, then that is their decision.

10.4.4 What we are keen to see brought to an end, however, are bids which are deliberately set at an uneconomic level to win the work on the basis that the difference will be achieved by negotiation on specification and quality, or through claims.

10.4.5 This will require some innovative thinking – you do not need to stray too far into this territory to run up against anti-cartel legislation. But industry must be involved in the solution to secure the necessary buy-in.

10.4.6 There may also be some relatively simple measures which can be taken, such as rolling out schemes like the Royal Incorporation of Architects in Scotland's "Bid / Don't Bid" assessments. These encourage firms to take a more pragmatic approach to deciding which contracts to tender for. By tendering for fewer contracts, firms waste less money tendering for work they are unlikely to win, and are able to invest more into the tenders they do submit.

#### 10.4.7 **Recommendation:**

**The industry should consider what is prompting 'suicide bids', and how to arrest them, so that both the customer and the contractor get a fair deal.**

### **10.5 Industry helping industry**

10.5.1 The private sector is self-evidently competitive. Nonetheless, there are clearly some areas in which a cross-industry approach can be mutually beneficial – such as in the development of apprenticeship schemes, or a standardised approach to new technologies.

### 10.5.2 Recommendations:

**Industry should use existing sources of guidance and work with the public sector to develop best practice models for the delivery of community benefits, and a shared apprenticeship model.**

**The industry needs to be ready to embrace modern methods of construction, and new and emerging technologies such as Building Information Modelling.**

**The industry should consider what industry-led training programmes currently exist for those bidding for public sector work, and whether there is scope for these to be co-ordinated and developed further.**

## **11. Resource implications and potential savings**

### **11.1 Resource implications**

11.1.1 The recommendations which we set out in this report have resource implications. Although we recommend that existing resources be used to the extent possible, more expert leadership in construction procurement will have cost implications as will, in the shorter term, the need for a change management team. Resources will be needed:

- to strengthen the construction procurement policy function within the Scottish Government;
- to fund the appointment of a CCA; and
- to support the rollout of Building Information Modelling.

11.1.2 There may be a case for these costs to be shared by all the public bodies which should benefit from their introduction whether through cash, time and/or resource contributions.

### **11.2 Savings**

11.2.1 However, we believe that the recommendations of this report, bring considerable potential for savings which should more than pay for the direct costs of their implementation, as indeed we understand that substantial savings have been realised from the earlier phase of procurement reform focussing on goods and services.

11.2.2 We believe that savings may arise from:

- More focus on an outcomes, design-led approach to the planning of the project and to whole of life cost;
- Streamlining of processes to reduce construction procurement to its essentials and to cut out the existing substantial unnecessary detail and bureaucracy, for example in pre-qualification questionnaire systems;
- “Self-delivery”, as described in section 6.5;
- The “new models” of procurement being trialled by the UK Government, dealt with in section 6.6;
- The use of “painshare / gainshare” methods, outlined in section 6.7;
- Increasing the limits for the use of Quick Quote, described in section 7.3, allowing a more streamlined approach for smaller procurements;
- The introduction of Building Information Modelling, as described in section 8.6; and
- The sharing of data and best practice.

11.2.3 Audit Scotland attributed £327 million of savings, or four per cent of annual procurement spending<sup>67</sup>, to the first two years of the procurement reform programme following John McClelland’s 2006 report. It may be reasonable to expect that a proportionately similar level of saving should be achievable from the implementation of our recommendations as were achieved, in the first stages of the wider Public Reform Programme, principally relating to goods and services. Assuming an identifiable annual construction spend of some £3.2 billion, as outlined in chapter 3, this would indicate savings of at least £120 million over the same timeframe.

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<sup>67</sup> Improving Public Sector Purchasing, part 2, Audit Scotland, July 2009

11.2.4 Construction spending is different, however, and many of our recommendations also speak to consideration of whole life costs; as well as savings in the time and energy taken to procure; and the delivery of social and economic benefits.

11.2.5 Further work is needed to understand and gather information on current spending and therefore the precise scope for achieving and measuring savings. We recommend elsewhere that a baseline position be established for the current categories of spend and one of the early tasks should be to promote targets for savings following the gathering of this information.

11.2.6 Taking account of the opportunities for substantial savings in the initial capital spend set out in this report and the opportunities for savings over the whole life of the project, we hope that it will be possible to set targets for savings considerably in excess of the figure of £120 million, not just over the first stage of the construction procurement reform programme, but annually. We have considered whether we should ourselves set a target, but the evidential base is currently lacking.

11.2.7 Whatever targets are set, it will be important for contracting authorities to report their spending and savings in a consistent manner in order that progress can be accurately measured.

11.2.8 For industry also, we hope that the implementation of the recommendations of the report will lead to a better, more efficient approach, which should allow a reduction in the initial costs of procurement. An expert-led plan for a construction project which is clear from the outset will allow the reduction of much of the waste which is caused where plans have been insufficiently developed and need to be changed as the project proceeds. The greater involvement of industry at an earlier stage of the project will allow innovative ideas to be brought to bear which can save money for both public sector and industry.

## **12. Implementation plan**

12.1.1 In the implementation of our recommendations, a guiding principle should be to seek to reduce costs by removing unnecessary procedures and simplifying the procurement process.

12.1.2 In appendix 4 we set out a summary of our recommendations, an implementation plan and timescales. We hope that the detail given in the report and the consensus which we believe we have achieved in the wide consultation which has preceded it will allow a rapid deployment of the necessary resources for its implementation.

12.1.3 We have suggested some timescales in which we believe that these recommendations can be implemented. This is, however, very much dependent on the allocation of sufficient resources to make this happen.

12.1.4 The report does not allocate lead responsibilities for implementing each of our recommendations. This is one of the first tasks which the strengthened construction procurement policy function needs to undertake in collaboration with others.

12.1.5 We understand that much of the success of the procurement reform programme to date has arisen from its collaborative approach, rather than through compulsion. This is a good basis on which to build, and accordingly, most of our recommendations are framed in this manner.

12.1.6 Previous reports looking at the construction industry, however, have sometimes failed to achieve their goals through a lack of teeth, and if it becomes apparent that it is not possible to achieve the changes necessary through collaboration, then the Scottish Government should be willing to consider compelling the implementation of these measures.

## Appendix 1- Glossary

|        |   |
|--------|---|
| AHSP   | Affordable Housing Supply Programme                             |
| APUC   | Advanced Procurement for Universities and Colleges              |
| BIM    | Building Information Modelling                                  |
| BREEAM | Building Research Establishment Environmental Assessment Method |
| CAD    | Computer-aided design   |
| CCA    | Chief Construction Advisor (see section 4.4)                    |
| CECA   | Civil Engineering Contractors Association                       |
| GVA    | Gross value added   |
| HSD    | Housing Supply Division (Scottish Government)                   |
| IIB    | Infrastructure Investment Board                                 |
| IIP    | Infrastructure Investment Plan                                  |
| ITT    | Invitation to tender  |
| KPIs   | Key performance indicators                                      |
| LHS    | Local housing strategies  |
| NPD    | Non-profit distributing   |
| PCA    | Procurement capability assessment                               |
| PCS    | Public Contracts Scotland                                       |
| PPRB   | Public Procurement Reform Board                                 |
| PQQ    | Pre-qualification questionnaire                                 |
| PRDG   | Procurement Reform Delivery Group                               |
| RIAS   | Royal Incorporation of Architects in Scotland                   |
| RICS   | Royal Institution of Chartered Surveyors                        |
| RSL    | Registered social landlord                                      |
| SAP    | Standard assessment procedure                                   |
| SFT    | Scottish Futures Trust  |
| SHIP   | Strategic Housing Investment Plan                               |
| SLP    | Strategic local programmes                                      |
| SME    | Small and medium-sized enterprise                               |
| SPCD   | Scottish Procurement and Commercial Directorate                 |

## Appendix 2 – Full terms of reference

To review the entire public and affordable housing sector construction procurement arrangements in Scotland and make recommendations to support improvements in efficiency, delivery and sustainability of construction procurement projects across the Scottish public sector and to ensure that Scotland’s public and affordable housing sectors make best use of both their and the industry’s resources.

The review should seek to build on best practice in existing structures and resources, such as SFT’s regional Hubs, wherever possible and should have regard to the principles of the 2006 McClelland report (translating them to a construction context) and the wider procurement reform landscape. Recommendations resulting from the review should be accompanied by an implementation plan.

The review will need to take account of:

- key stakeholder views;
- Audit Scotland’s Review of Major Capital Projects (published in late June 2008), and the follow up report, published in January 2011 (“Management of Scottish Government’s Capital Investment Programme”);
- the UK Government’s “Construction Strategy” published in 2011;
- the 2006 McClelland Report and,
- other sources of relevant information including the Procurement Information Hub and Scottish Government’s “Construction Procurement Manual” (or other sources of good practice guidance for construction).

The Review will examine:

- current structure and organisation of construction procurement activity across the wider Scottish public sector, including affordable housing and Registered Social Landlords (RSLs);
- skills and capability deployed by purchasing bodies;

- existing practices and procedures;
- measures of performance indicators and targets applied;
- existing sources of advice and guidance;
- application of project assurance techniques;
- sustainability in a construction context; and
- what lessons can be drawn from experience elsewhere (e.g. the UK Government Construction Strategy).

The review will identify opportunities and make recommendations to ensure that the construction sector:

- achieves efficiency improvements through opportunities for collaboration where appropriate;
- raises its performance through improvements to capability, procurement practice and project assurance;
- is able to identify and quickly adopt emerging best practice and that practices are standardised wherever possible;
- adopts good practice in relation to sustainability, including life cycle costing and reduced carbon and energy consumption;
- manages common/major contractors and projects effectively;
- makes best use of available construction procurement/project skills; and
- makes best use of new and emerging innovations in techniques, technology and materials (e.g. Building Information Modelling).

## **Appendix 3 - Approaches to construction by sector**

### **Local government**

Scotland's 32 local authorities were responsible for some £2.1 billion of spending on construction in 2011-12. The size and budget of the 32 authorities varies significantly, and consequently so does their level of spending on construction. Each local authority has its own set of standing orders which determine how it carries out procurement – neither the provisions of the Scottish Public Finance Manual, nor the Scottish Construction Procurement Manual are mandatory for this sector.

Scotland Excel is the established centre of expertise for procurement in the local government sector. It is a non-profit organisation, funded by the 32 local authorities, and, as of April 2012, had a portfolio of 48 contracts with an estimated annual value of approximately £300 million<sup>68</sup>. To date, it has had limited influence in construction, although we understand that it is investigating the potential for it to increase that influence – indeed, it recently awarded a framework agreement for engineering and technical consultancy services.

Each of the 32 local authorities is also a participant in one of the five hubCos established across Scotland as a means of delivering capital investment. The structure and role of hubCos are discussed later in this appendix.

### **Health**

There are 14 territorial NHS Boards, seven special NHS boards and one public health body in Scotland. Health Facilities Scotland is the Facilities Directorate of the Procurement Commissioning and Facilities Strategic Business Unit within National Services Scotland, and has established frameworks which NHS Scotland Organisations can call off from for the procurement of capital works. These frameworks can also be used by other health or public sector bodies for combined, or related health and social care projects.

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<sup>68</sup> Continuing our journey 2012-2015, Scotland Excel, page 2

There are a number of routes by which construction works are delivered in the health sector in Scotland.

The non-profit distributing (NPD) model is used for large scale, acute facilities; Frameworks Scotland (awarded by Health Facilities Scotland) is used for publicly-funded acute facilities and projects involving an element of refurbishment; whilst hubCos and the health boards themselves can deliver other facilities.

Frameworks Scotland comprises a framework agreement covering principal supply chain partners and also frameworks for professional services contracts covering the required disciplines for the form of contract. These frameworks cover the whole of Scotland, and the contracts are based on the NEC3 models. Individual health boards are not obliged to use Frameworks Scotland, but do have to justify their reasoning if they choose not to do so.

hubCos are discussed below. All territorial health boards are participants in one of the five hubCos. The agreements which underpin the creation of hubCos include “exclusivity thresholds”, and the local hubCo should be offered the first opportunity to demonstrate a value for money and timely proposal for all relevant health board projects worth more than this threshold. The threshold for the first three hubCos to be established (South-East, North and East-Central) is £750,000, whilst for the final two hubCos (West and South-West), the threshold stands at £3.5 million.

## **Transport**

Transport Scotland is the national transport agency for Scotland. The agency is responsible for overseeing the operation and improvement of:

- trunk road, ferry, inland waterway and railway networks in Scotland
- air passenger facilities and routes in the Highlands and Islands
- national concessionary travel schemes
- provision of travel information services
- future transport policy and investments
- promotion of sustainable transport and road safety

For new roads infrastructure work, Transport Scotland procures and manages a number of different types of contract models. These include private finance models such as non-profit distributing for some high-value, strategic infrastructure projects and capital funded fixed price, design & build and employer's design contracts.

Transport Scotland has contracts in place with operating companies who ensure the trunk roads are safe, efficient and well managed. These contracts are divided into four regional units and are currently operated by:

- North West – Operated by BEAR Scotland since April 2013
- North East – Operated by BEAR Scotland since April 2007 (contract extended to 31 March 2014)
- South East – Operated by BEAR Scotland since April 2007 (contract extended to 31 March 2014)
- South West – Operated by Scotland TranServ since April 2013

Operating Companies carry out all works up to a threshold value of £250,000 for the east contracts, and £350,000 for the west contracts. Between these values and £5 million, works are competitively tendered through the Operating Company Contracts.

Ministerial objectives for improving the Scottish Rail Network are taken forward in conjunction with the rail infrastructure owner, Network Rail. Arrangements are in place which enable Network Rail to maintain the infrastructure required to facilitate the train services and also deliver the agreed rail programmes, including the procurement of works and services for projects such as the construction of the Borders Railway and the Edinburgh Glasgow Improvements Programme.

## **Water**

Scottish Water is the public corporation charged with managing Scotland's water network. It has an investment programme worth around £450-500 million per annum. Scottish Water Solutions is a joint venture delivery vehicle in which Scottish Water has a 51 per cent share ownership, with the balance held by delivery partners. It is currently the delivery vehicle for 30 per cent of the investment programme.

Scottish Water's investment priorities are set by Scottish Ministers, with the Water Industry Commission in Scotland providing a value for money challenge to Scottish Water's proposals for delivering on these priorities.

Scottish Water is primarily subject to the provisions of the European Utilities Directive, rather than the Procurement Directive.

### **Affordable housing**

There is a complex landscape in the delivery of affordable housing in Scotland. The Scottish Government's Affordable Housing Supply Programme (AHSP) funds housing for rent and for low cost home ownership. The majority of funding is provided to Registered Social Landlords (RSLs) and local authorities to build new homes for rent, although the AHSP also provides funding to improve existing homes, often as part of the wider regeneration of an area, and to others such as private developers.

All local authorities publish Local Housing Strategies (LHS). These set out a strategic approach to addressing housing need and demand and inform the delivery of housing and related services over a five year period. Authorities supplement their LHS with an annual Strategic Housing Investment Plan (SHIP) which is the key document for setting out the priorities for affordable housing investment at the local level over a five year period and provides the basis for targeting the AHSP funds locally to meet the desired outcomes as outlined in the LHS. A recent addition to the SHIP requirements is for a Strategic Local Programme to be developed which matches the SHIP priorities to available resources over a three year period.

The award of AHSP funding to local authorities and RSLs is administered by the Scottish Government Housing Supply Division, except in Glasgow and Edinburgh, where the two city councils administer the funding to RSLs within their areas as a result of the Transfer of Management of Development Funding. In 2011-12, total AHSP grant funding was £352 million.

There are approximately 180 RSLs registered in Scotland, of which we understand some 40-50 are actively engaged in development work at any time. Each RSL has its own constitution, policy and procedures and is governed by a voluntary committee.

There have been some sporadic attempts at collaborative procurement within the RSL sector. There are examples of this in West Lothian and Fife, where a model operates in which a lead RSL acquires sites, procures contracts and develops the projects. An agreement between partner RSLs identifies their roles and relationships, and also covers risk assessment, risk management and risk sharing. As part of that agreement, they identify and agree specific projects which will transfer from the lead RSL to other members at completion stage. After completion, the 'landlord' RSL or council then owns and manages their new housing. These approaches tend to be strategic in nature and have the support of the relevant local authority.

Most alliances under this model are not separate legal entities; they are generally a consortium and each RSL retains its own identity. Each RSL also retains responsibility for reporting to its own management committees. There are also less formal arrangements driven by some councils in which only a small number of RSLs receive funding for new developments.

Another form of collaboration is through the use of agency services. From Annual Performance and Statistical Returns submitted to the Scottish Housing Regulator we also know that 21 RSLs were using other RSLs' development services and 13 RSLs were using non-RSLs to deliver their affordable housing programme in the twelve months to 31 March 2012. Twelve RSLs were providing development agency services to RSLs and local authorities.

### **Central government**

The remainder of central government and its agencies – such as the Scottish Prison Service and Scottish Court Service – is responsible for lesser amounts of direct construction spending, although it does take forward some large projects, like the construction of the new Scottish Crime Campus at Gartcosh.

The Scottish Procurement and Commercial Directorate performs a triple role as the Centre of Expertise for procurement within the central government sector, the National Centre of Expertise (awarding national contracts for stationery and utilities, for example), and as the policy centre for procurement.

The Scottish Government currently carries out very few construction exercises. It does, however, retain some residual professional construction expertise, whose focus is policy development.

### **Universities and colleges**

Data from the Procurement Information Hub shows that universities and colleges spent at least £219 million on construction works in 2011-12.

We are told that universities tend, by and large, to carry out these exercises themselves – or at least to appoint consultants to act as project managers on their behalf. In the college sector, in-house expertise tends to be more limited and the reliance on external funding greater, and so the Scottish Funding Council has in the past taken a much stronger role in overseeing capital projects. The three large college projects currently underway, however – in Kilmarnock, Inverness and Glasgow – are all being delivered by the non-profit distributing model, with support from the Scottish Futures Trust.

The established centre of expertise for this sector is Advanced Procurement for Universities and Colleges (APUC). APUC has a small team which can support capital projects in colleges, although we are told that their focus is increasingly involved on maintenance and general estates management work. There is a strong relationship between APUC and directors of estate in the sector.

## **Scottish Futures Trust**

The Scottish Futures Trust (SFT) was established in 2008 as a limited company wholly owned by Scottish Ministers, with the aim of improving the efficiency and effectiveness of infrastructure investment in Scotland. It works collaboratively with a range of public bodies to deliver innovative financing for infrastructure investment, particularly through the delivery of the non-profit distributing programme of works; the National Housing Trust; and works funded by tax incremental financing.

Taken together, these three programmes represent more than £3 billion of public sector investment<sup>69</sup>, which makes SFT a very significant player in the Scottish construction sector.

Whilst SFT is wholly owned by Scottish Ministers, and is therefore subject to the provisions of public procurement law, its arms-length status does give it some more latitude in some aspects of its operations – such as its ability to recruit outwith the boundaries of civil service restrictions.

In addition it works to support public bodies with property asset management, through supporting the hubCo programme and facilitating the Schools for the Future programme.

## **hubCos**

There are five regional “hubCos” in Scotland. These are institutional public private partnerships owned 60 per cent by a private sector partner, 30 per cent by the public sector partners within each of the five territories, and 10 per cent by the Scottish Futures Trust. The rights to the private sector share ownership in each of the hubCos were competitively tendered and a diverse range of public sector partners are involved, for example health, local authorities, emergency services and RSLs.

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<sup>69</sup> Business Plan 2013-2014, Scottish Futures Trust

The aim of this approach is that:

“Each hubCo will take a strategic, long-term planning approach of its infrastructure requirements to support the delivery of community services. hub will provide a mechanism for delivering and managing assets more effectively, with continuous improvement leading to better value for money, which will be measured through detailed key performance indicators”<sup>70</sup>

There is an “exclusivity threshold” set for NHS primary and community-based projects within each hubCo area, which means that the local hubCo should be offered the first opportunity to demonstrate a value for money proposal for all relevant health board projects worth more than this threshold. The threshold for the first three hubCos to be established (South-East, North and East-Central) is £750,000, whilst for the final two hubCos (West and South-West), the threshold stands at £3.5 million.

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<sup>70</sup> <http://www.scottishfuturestrust.org.uk/our-work/hub/five-hub-territories/>

## **Appendix 4 – Implementation plan**

The following implementation plan brings together the recommendations from the main body of the report and outlines some of the measures that will be required to ensure they are implemented successfully. Lead responsibilities have not been allocated here – this is one of the first tasks that the strengthened construction procurement policy function needs to undertake, in collaboration with others – but it should be noted that in line with our consultative approach to this review, only a collaborative approach from across the public sector and industry will ensure the best solutions are developed and maximum impact achieved. Timelines have been suggested for the various actions to be taken forward, but are based on appropriate resources being assigned to the implementation phase. The numbering relates to the section in the main report in which the recommendation is found.

#### 4. Governance, accountability and leadership

| Section | Recommendation   | Implementation measures  | Timeline  |
|---------|--|--|---|
| 4.2     | The construction procurement policy function within the Scottish Government should be strengthened | <p>This policy function should be established under the clear control of a senior manager within the Scottish Government.</p> <p>It should be suitably resourced to set the policy for construction procurement in Scotland, to be a central resource for advice, and to drive the adoption of best practice across the public sector.</p> <p>Although we recommend that this capability and capacity should be strengthened within the Scottish Government, and it is clearly appropriate that government retains responsibility for developing policy, we recognise the delivery expertise which has been built up across the public sector, and as such, it may be appropriate for Scottish Ministers to commission work to support policy development from those other bodies with proven expertise.</p> | <p>Work to more fully scope out the role should begin immediately.</p> <p>Where possible existing resources within SG should immediately begin to form the basis of the strengthened policy function</p> <p>Some additional recruitment is likely to be necessary</p> |
|         |  | <p>All parties will need to ensure that they work closely and in co-operation with each other to ensure that their activities and functions are complementary and co-ordinated, under the auspices of the Public Procurement Reform Programme. There must be no duplication of effort and there is no room for “turf wars”.</p>  |   |

| Section | Recommendation  | Implementation measures   | Timeline                |
|---------|---|---|-------------------------|
| 4.3     | As a matter of priority, the strengthened construction procurement policy function within the Scottish Government should, in collaboration with other bodies key to the implementation of our recommendations, determine lead responsibility for delivering each recommendation | Officials from the Scottish Government and other key partners should determine the most effective and appropriate allocation of tasks, taking skills, resources and responsibilities into account | As a matter of priority |

| Section | Recommendation   | Implementation measures  | Timeline   |
|---------|--|--|--|
| 4.4     | A Chief Construction Adviser (CCA) should be directly appointed by the Scottish Government | <p>The Chief Construction Adviser's role would be to:</p> <ul style="list-style-type: none"> <li>• Champion the implementation of this report by challenging both the public sector and industry on pace and progress</li> <li>• Challenge industry to modernise and innovate its processes, practices and relationships</li> <li>• Be a supportive, enabling, but challenging partner of the Scottish Government</li> <li>• Be a conduit for industry to raise concerns with or approach ministers</li> </ul> <p>The CCA should become a member of the Public Procurement Reform Board</p> <p>This is likely to be a fixed-term appointment which is capable of being refreshed and reviewed.</p> <p>The appointee should be directly accountable to and have direct access to Ministers.</p> <p>While the individual should have expertise in construction and procurement, leadership strengths are likely to be equally crucial.</p> | The Chief Construction Adviser should be appointed from the start of the 2014-15 financial year. |

| Section | Recommendation   | Implementation measures   | Timeline   |
|---------|--|---|--|
| 4.5     | A mechanism should be established under the existing Public Procurement Reform Programme to bring together key stakeholders to drive the procurement reform agenda as it relates to construction | <p>To provide a strategic forum for discussion of implementation issues.</p> <p>Led by the Chief Construction Advisor (or by some other independent figure with strong experience in construction or procurement and credibility with industry and the public sector, until such time as the CCA is appointed). Secretariat support should be provided by the Scottish Government.</p> <p>Representation should be drawn from leadership levels across both the construction-procuring parts of the public sector and industry (clearly some commercially sensitive agenda items may need to be discussed with only the public sector representatives present).</p> <p>The focus should very much be on the strategic, rather than the operational.</p> <p>The grouping should report in to the Public Procurement Reform Board (PPRB).</p> | Should meet to agree outline programme of work by the end of March 2014. |

## 5. Prioritisation and co-ordination of spending

| Section | Recommendation   | Implementation measures   | Timeline     |
|---------|--|---|--------------|
| 5.2     | There should be a review of the methods of strategic prioritisation and co-ordination of construction spending across the public sector in Scotland - to identify best practice and to ensure that investment decisions are informed by the use of appropriate techniques. | The IIB should instruct investigation of the different methods of project prioritisation used by public bodies to identify best practice including the use of economic appraisal tools. COSLA and SOLACE should determine the scope for introducing equivalent best practice recommendations to councils. | By June 2014 |

| Section | Recommendation  | Implementation measures  | Timeline                       |
|---------|---|--|--------------------------------|
| 5.3     | Each public body should publish annually a rolling pipeline plan of anticipated spending on construction, setting out detailed known information on timescales for pre and post-contract award including any planned phasing, the anticipated approach to market, the status of required consents, the funding model being used and whether formally approved by their governing body. These pipeline plans should be collated and held centrally, and should initially contain all anticipated work above a value of £4 million over the next two years, with a clear plan put in place to extend this to cover at least work worth £2 million or more, and a timeframe of at least three years. | Initial work will be required to develop guidance on formatting and to develop a system to be able to store this information.  | By the summer of 2014          |
|         |   | Provisions within the Procurement Reform Bill could be used to require contracting authorities to submit their pipeline information for anticipated work with a value in excess of £4 million which is to be commenced over the following two years. | By 2015                        |
|         |   | A clear plan should be developed to extend this to cover at least work worth £2 million or more, and a timeframe of at least three years.  | Plan in place by 31 March 2015 |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>  | <b>Timeline</b> |
|----------------|--|---|-----------------|
| 5.4            | Public sector bodies involved in construction projects should be able to demonstrate that sufficient linkages are made between them. This should include consideration of appropriate opportunities for collaboration and for synergies with other programmes of work in the planning phase of all infrastructure spend. | Contracting authorities should be required to consult with each other during the planning phase of projects to determine the scope for synergies. | Ongoing         |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>   | <b>Timeline</b> |
|----------------|--|--|-----------------|
| 5.5            | Regional co-ordination of infrastructure spend should be considered by councils across Scotland. | To the extent that this is not already in hand, councils should consider the potential for the strategic co-ordination of infrastructure spend and should consider the hubCo approach as well as options being explored by the Scottish Cities Alliance. | Ongoing         |

| Section | Recommendation  | Implementation measures  | Timeline |
|---------|---|--|----------|
| 5.6     | <p>Current Scottish Government Affordable Housing Supply programme arrangements provide for an enhanced role for local authorities in programme planning and prioritisation. Alongside Scottish Government, local authorities should therefore play a key role in helping to inform and influence procurement choices and delivery of local authority and RSL affordable housing supply in their areas as well as looking more widely at potential synergies with neighbouring authorities.</p> | <p>New, more effective forms of collaboration in procuring affordable housing should be piloted in a small number of areas, to build on existing good practice and learning from previous partnerships. Pilots should set realistic expectations of outcomes, and engage local authorities and RSLs effectively.</p> <p>Supplementary guidance should be developed by Scottish Government Housing Supply Division covering procurement choices and delivery options which local authorities should consider for the affordable housing programmes in their areas and discuss and agree as part of the SLP process.</p> | Ongoing  |

## 6. Approach to Market

| Section | Recommendation  | Implementation measures   | Timeline  |
|---------|---|---|---|
| 6.2     | Design and whole life costing should be afforded appropriate priority in any construction procurement process. A comprehensive business case and procurement strategy focusing on desired outcomes and whole-life costs should be developed. This will require the earliest possible engagement between clients, users, designers and contractors | Guidance should be developed on pre-contract comprehensive business planning – particularly Outline Business Case and Final Business Case stages building on existing sources, such as the Scottish Construction Procurement Manual and Scottish Capital Investment Manual.                                     | By summer 2014                                  |
|         |   | Each body responsible for infrastructure spending should ensure that the process starts with a proper business plan clarifying the outcomes of the project, not solely the outputs.   | Authorities to build into own processes by 2015 |
|         |   | There should be early engagement among clients, users, designers and contractors and best practice guidance should be developed setting out how to do this in compliance with public procurement law building on existing sources, such as Architecture and Design Scotland, and examples from across Scotland. | By summer 2014                                  |
|         |   | Existing guidance on the advantages and disadvantages of using different approaches to market – such as design and build and traditional procurement should be reviewed, and updated as necessary.  |   |
|         |   | Further guidance should be developed and implemented on the measurement of whole life cost in construction projects.  | By the end of 2014                              |
|         |   | Measurement of this should be built into Procurement Capability Assessments.  | In time for the 2015 round of assessments       |

| Section | Recommendation   | Implementation measures  | Timeline  |
|---------|--|--|---|
| 6.3     | Guidance on best practice in the use of framework agreements should always be followed, in particular in allowing opportunities for SMEs to participate. | <p>Best practice guidance should be developed building on existing guidance on the use of frameworks (such as SPPN5/2010), tailoring it to a construction setting. This should ensure that frameworks do not discriminate against Scottish SMEs.</p> <p>This guidance should specifically consider the issue of aggregating smaller contracts into larger lots which can be appropriate to achieve economies of scale, access to finance and other objectives, but which may reduce opportunities for participation of SMEs.</p> | Initial guidance to be developed by 31 March 2014         |
|         |  | <p>That guidance should reflect that whilst economic impact cannot currently be used as a contract award criterion, it should be a key consideration in developing procurement strategies – particularly in remote and rural communities.</p>  |   |
|         |  | <p>Guidance should be adopted by contracting authorities.</p>  | By the end of 2014  |
|         |  | <p>Measurement of this should be built into Procurement Capability Assessments.</p>  | Built into PCAs in time for the 2015 round of assessments |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>   | <b>Timeline</b>   |
|----------------|--|--|---|
| 6.3            | When used inappropriately, UK-wide frameworks and frameworks negotiated by regional purchasing bodies elsewhere in the UK can have the effect of preventing SMEs from participating in public procurement. Guidance should be developed and implemented on the appropriate use of such frameworks. This guidance should pay particular heed to the value of growing local economies. | Guidance should set out the sorts of issues which organisations should consider before deciding to use a UK-wide framework agreement – including the potential impact on Scottish and local economies. | Initial guidance to be developed by 31 March 2014         |
|                |  |  | By summer 2014  |
|                |  | As part of the PCA process, organisations should demonstrate that they have undertaken due consideration before entering into any new such arrangements.   | Built into PCAs in time for the 2015 round of assessments |

| Section | Recommendation  | Implementation measures   | Timeline         |
|---------|---|---|------------------|
| 6.4     | Further guidelines about certain aspects of the operation of the hubCo model should be developed. | <p>The guidelines should include:</p> <ul style="list-style-type: none"> <li>• Continuation of the work to develop a solution to the issue of the delay in payment of design fees until financial close.</li> <li>• Consideration of expanding existing arrangements for monitoring performance, the achievement of value for money and the continued compliance with the terms of the original contract advertisement.</li> <li>• The appropriate exchange of information between hubCos to reinforce best practice and share ideas.</li> <li>• Consideration of the desirability of setting minimum contract values to be delivered by hubCos.</li> </ul> | By 31 March 2014 |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>   | <b>Timeline</b> |
|----------------|---|--|-----------------|
| 6.5            | The potential for savings to be delivered from clients enforcing the 'self-delivery' of contracts by main contractors should be investigated, with particular reference to the work being undertaken by Scottish Water. | Savings reported by Scottish Water should be monitored with a view to exploring opportunities to adopt a similar approach where appropriate.<br><br>Information on existing levels of self-delivery across all sectors to be gathered. | Ongoing         |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>   | <b>Timeline</b> |
|----------------|---|--|-----------------|
| 6.6            | Developments in the UK Government's trials of its three 'new methods' of procurement should be monitored, and guidance developed for their use in Scotland, if appropriate. | Progress of UK trials to be monitored.<br><br>Data gathered on the outcomes of any use of these methods in Scotland. | Ongoing         |

| Section | Recommendation   | Implementation measures  | Timeline  |
|---------|--|--|---|
| 6.7     | Thorough consideration of options must be applied to contract selection as part of the pre-commercial stage. | An up-to-date comparison matrix of the various existing contract types should be developed (building on existing guidance) to assist clients to select a contractual approach. This would sit as part of the development of a construction procurement journey tool. | Initial guidance to be developed by summer 2014 |
|         |  | Support should be offered for contractual decisions, making clear that ownership of risk and decision-making will still rest with the individual contracting authority.  |   |
|         |  | The feasibility and potential benefits of integrating this approach within PCS Tender to allow the type of contract used to be recorded, and lessons to be shared between organisations should be examined.  | By the end of 2014                              |
|         |  | Contracting authorities should consider how well their selected contract type has delivered for them both at project completion and post-occupancy evaluation stages. Any learnings should be applied to future contracts.   | Ongoing   |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>                           | <b>Timeline</b>    |
|----------------|--|--|--------------------|
| 6.7            | There must be an open, mature and reasonable discussion between parties when deciding on the allocation of risk. | Guidance on appropriate risk allocation to be developed. | By the end of 2014 |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>  | <b>Timeline</b>   |
|----------------|--|---|---|
| 6.7            | Any variations to standard forms of contract should be kept to a minimum and used only when absolutely necessary to take account of the particular circumstances of the project. We also recommend that any such amendments should be clearly highlighted within contract documentation so that client and contractor are clear on the variations being imposed to the standard terms. | All public bodies should clearly highlight or attach as an addendum any standard conditions which have been varied or additional clauses added, to ensure clarity and reduce conflicts with standard clauses. | By summer 2014  |
|                |  | Measurement of this should be built into Procurement Capability Assessments.  | Built into PCAs in time for the 2015 round of assessments |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>                                | <b>Timeline</b>    |
|----------------|---|---|--------------------|
| 6.7            | Specific guidance should be developed to help contracting authorities to decide when and how to use painshare / gainshare arrangements. | Guidance on the use of painshare / gainshare to be developed. | By the end of 2014 |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>   | <b>Timeline</b> |
|----------------|---|--|-----------------|
| 6.8            | All public bodies should adopt a maximum 30 day payment term to their suppliers, as detailed in Scottish Procurement Policy Note 08/2009, and this should form the target against which performance in meeting payment terms is monitored as part of procurement capability assessments (unless shorter targets have already been adopted by the organisation in question). | Performance in meeting these terms should be reported and measured as part of the PCA process. | By summer 2014  |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>  | <b>Timeline</b>  |
|----------------|--|---|--|
| 6.8            | The use of Project Bank Accounts should be trialled in Scotland. | A trial should be co-ordinated by the Scottish Government. The trial should be reviewed and assess the potential for the wider application of PBAs. | Trial(s) to be arranged by the end of 2013-14 financial year         |
|                |  | Accompanying guidance, updated as lessons are learned should be published.  | Potential for wider application to be considered by the end of 2014. |

| Section | Recommendation   | Implementation measures   | Timeline                             |
|---------|--|---|--------------------------------------|
| 6.8     | <p>Public sector clients need to ensure that there is a clear understanding between those involved in pre-contract award stage and those involved in delivery on the public sector requirement for fair payment.</p> <p>Contractual terms between client and main contractor should consistently outline fair payment terms for supply chain participants.</p> <p>Clients should ensure that appropriate resources are allocated to contract management and enforcement of terms and conditions of contract.</p> | <p>Guidance should be issued to public sector clients on the need to ensure that there is a clear understanding amongst those involved in the pre-contract stage of the public sector requirement for fair payment and alter procedures as necessary to ensure that contracts require fair payment down the supply chain.</p>   | By 30 June 2014.                     |
|         |  | <p>That guidance should be adopted by all contracting authorities.</p> <p>Appropriate resources should be allocated to contract management by contracting authorities.</p> <p>Alternative ways of ensuring that contract terms are complied with should be sought – such as asking contractors to file quarterly reports on their supply chain payment performance.</p> | By 2015                              |
|         |  | <p>Measurement of this should be built into the PCA process.</p>  | In time for the 2015 PCA assessments |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>  | <b>Timeline</b> |
|----------------|--|---|-----------------|
| 6.9            | Cash retentions should be used only after careful consideration by contracting authorities, and not as a default measure. Whilst contracting authorities have a duty to safeguard public funds, they should also be mindful of the potentially detrimental effects of cash retentions on their contractors. Greater guidance should be developed to help contracting authorities to determine when and how they should use cash retentions and other project assurance tools in an appropriate and proportionate manner. | Guidance should be developed and built in to the Procurement Capability Assessment process. | By summer 2014  |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>   | <b>Timeline</b>                        |
|----------------|--|--|--|
| 6.9            | Lessons should be sought from the trial of project bank accounts in Scotland about how PBAs, or other, similar trust accounts might be used to administer cash retentions. | Project bank account trials to be monitored and their wider applicability, or the use of trust funds for cash retentions explored. | Follows trial of project bank accounts |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>   | <b>Timeline</b> |
|----------------|---|--|-----------------|
| 6.9            | A consistent approach to project assurance should be used for all major construction projects. Gateway reviews should be the benchmark against which other models should be tested. | Guidance to be developed covering project assurance tools and building on existing work. | By summer 2014  |

## 7. Capability and capacity

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>  | <b>Timeline</b>   |
|----------------|---|---|---|
| 7.2            | Public sector bodies involved in construction procurement must have access to the right mix of professional procurement and construction expertise to ensure that infrastructure is procured effectively. It may not be appropriate for each organisation to retain this expertise on a permanent basis. It may instead be achieved through collaboration with other bodies – either on a project-by-project, or a longer-term basis. | Guidance on the necessary blend of required skills should be developed.   | By summer of 2014   |
|                |   | Procuring authorities should confirm that they have assessed their capability against these guidelines and that they have the capability and capacity to carry out construction procurement or outline the alternative collaborative arrangements through which they plan to achieve this capability. | Built into PCAs in time for the 2015 round of assessments |

| Section | Recommendation   | Implementation measures  | Timeline   |
|---------|--|--|--|
| 7.2     | <p>The existing PCA framework should be developed to ensure that it adequately assesses, reports on and helps to improve organisations' ability to procure publicly funded construction. Those carrying out the assessments should be suitably qualified to do so and all organisations procuring construction projects with public funding should undergo procurement capability assessments.</p> | <p>The PCA should be developed to deal appropriately with construction procurement</p> <hr/> <p>Construction-specific elements should be separately recorded as part of the PCA reporting process</p> <hr/> <p>Those carrying out the construction procurement part of the assessments should be suitably qualified to do so.</p> <hr/> <p>All organisations procuring construction projects with public funding should undergo assessment of their procurement capability.</p> <hr/> <p>For those not currently subject to PCAs, systems for implementing the process will have to be agreed with parties involved.</p> | <p>In time for the 2015 round of assessments</p> |

| Section | Recommendation  | Implementation measures  | Timeline                                      |
|---------|---|--|---|
| 7.2     | <p>A current and required baseline of skills in construction procurement should be established.</p> <p>A strategy should be developed to ensure those needs are met through both formal learning and mentoring, building as appropriate on the Scottish procurement competency framework.</p> <p>Consideration should be given as to whether a structured approach to delivering appropriate learning – such as a Skills Academy approach (virtual or otherwise), would deliver some or all of the required benefits.</p> | <p>The existing skills base should be determined, as well as future requirements.</p> <p>Consideration should be given to creating a skills academy (“virtual” or “real”).</p> <p>Consideration should be given to creating a cross-sector “mentoring-pool”, or community of best practice.</p> <p>Guidance and expertise should be sought from academia and the relevant professional bodies in implementing these recommendations.</p> | Full strategy to be agreed by the end of 2014 |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>  | <b>Timeline</b> |
|----------------|--|---|-----------------|
| 7.3            | New standardised guidelines setting out best practice on the end-to-end construction procurement process should be developed and maintained. As far as possible, the guidelines should be written in plain English and should be in an accessible digitised form based on the example of the procurement “Journey” for goods and services. The guidelines should be capable of being used in a proportionate way for projects of different sizes and risk profiles as well as being adaptable for different sectors. | The Scottish Construction Procurement Manual should be reviewed, updated and published in a more user-friendly form, akin to the Procurement Journey. | By summer 2014. |
|                |  | The guidelines should be in a digital format which can be accessed in a way which is proportionate to the size of the contract.                       |                 |
|                |  | As far as possible, the guidelines should be written in plain English.  |                 |
|                |  | The guidance should be maintained on an ongoing basis.  | Ongoing         |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b> | <b>Timeline</b>       |
|----------------|--|--------------------------------|-----------------------|
| 7.3            | Good practice guidance on those elements of bids which should and shouldn't be scored and on the focus to be given on quality and whole life costing in the scoring should be developed. |                                | By the summer of 2014 |

| Section | Recommendation  | Implementation measures  | Timeline  |
|---------|---|--|---|
| 7.3     | Public bodies should rightly seek to re-assure themselves of the competence and skills of bidders. This, however, should be done through asking for appropriate experience – as indeed is Scottish Government policy - rather than necessarily asking for exact experience of similar project delivery within a short number of years (for example “supply three examples of community halls which you have built in the last five years”). | Guidance should be developed covering the issues which public sector clients should consider when determining how to measure skills and experience. This should balance the need to ensure the competence of bidders with the risk of disadvantaging local firms, reducing competition, and damaging the industry. | By the summer of 2014                                     |
|         |   | This guidance should be adopted by all contracting authorities.  | By 2015   |
|         |   | As part of the PCA process, organisations should demonstrate their due consideration of these concerns.  | Built into PCAs in time for the 2015 round of assessments |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>   | <b>Timeline</b>   |
|----------------|--|--|---|
| 7.3            | The ability of a company to deliver a contract should not solely be measured by the use of turnover thresholds. Where annual turnover is part of financial criteria it should be limited to no more than two times the annual contract value as outlined in the EU commission's proposal. Further guidance should be developed on other valid and proportionate methods for assessing financial strength and risk. | Further guidance should be developed on other valid and proportionate methods for assessing financial strength and risk.   | By summer of 2014   |
|                |  | This guidance should be adopted by contracting authorities.  | By 2015   |
|                |  | As part of the PCA process, organisations should demonstrate that they have undertaken due consideration of this guidance. | Built into PCAs in time for the 2015 round of assessments |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>  | <b>Timeline</b>    |
|----------------|--|---|--------------------|
| 7.3            | To the extent possible within the full scope of the law, including as may be amended by the new EU Procurement Directive and Procurement Reform Bill, contracting authorities should take the prior performance and behaviour of bidders into account when awarding contracts. Guidance which ensures compliance with legislation should be developed. | Guidance should be developed on this which ensures compliance with developing EU and other legislation. | By the end of 2014 |
|                |  | This guidance should be adopted by contracting authorities.   | By 2015            |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>                                   | <b>Timeline</b>       |
|----------------|---|--|-----------------------|
| 7.3            | The Scottish Government should reissue its existing guidance to the public sector on how to deal with abnormally low tenders. | Guidance should be reviewed, revised (if required) and reissued. | By the summer of 2014 |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>                                   | <b>Timeline</b>       |
|----------------|---|--|-----------------------|
| 7.3            | Guidance should be developed which assists contracting authorities to carry out successful pre-market engagement as part of a construction project. | Guidance should be reviewed, revised (if required) and reissued. | By the summer of 2014 |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>  | <b>Timeline</b>                                  |
|----------------|--|---|--|
| 7.3            | Contracting authorities should always make feedback available to both successful and unsuccessful bidders at PQQ and ITT stage. Feedback should be timely, and a model of good practice building on existing sources, such as `the Scottish Suppliers' Charter, and legislative requirements, should be developed. | A model of good practice should be developed, which builds on existing best practice. | By summer of 2014                                |
|                |  | This guidance should be adopted by contracting authorities.                           | By the end of 2014                               |
|                |  | This should be measured as part of the PCA process.                                   | Built into PCAs in time for the 2015 assessments |

| <b>Section</b>   | <b>Recommendation</b>  | <b>Implementation measures</b>   | <b>Timeline</b> |
|--|--|--|-----------------|
| 7.3  | If not already established, public sector procuring authorities should work together to develop forums with locally-operating construction firms which would meet on a regular basis and include economic development teams and construction procurement staff to discuss the pipeline of work, issues and opportunities, with a view to building greater understanding, transparency and improved processes and practice. | More suited to those authorities which are either based in, or have a substantial programme of work in a given area. | By autumn 2014  |
| May exist already in some areas.   |  |  |                 |
| Should bring locally-operating industry together with economic development teams and construction procurement staff. |  |  |                 |
| Will allow industry to feedback on current capacity, skills and opportunities.                                       |  |  |                 |
| Measurement of this should be built into Procurement Capability Assessments.   |  | Built into PCAs in time for the 2015 round of assessments  |                 |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>   | <b>Timeline</b>    |
|----------------|---|--|--------------------|
| 7.3            | A formal support mechanism should be developed to help SMEs understand how to compete for public contracts. | The identification of gaps in SME knowledge should be established and linkages made to existing training programmes as well as development of new training and support mechanisms. | By the end of 2014 |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>   | <b>Timeline</b>                           |
|----------------|---|--|---|
| 7.3.           | Practice should be standardised by making the use of Public Contracts Scotland mandatory when advertising publicly-funded construction contracts. | Measurement of this should be built into Procurement Capability Assessments. | In time for the 2015 round of assessments |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>                                    | <b>Timeline</b>                          |
|----------------|--|---|--|
| 7.3.           | Contractors on major projects should be encouraged to advertise sub-contracts on PCS where they have not already fully identified their supply chain | Existing guidance should be reviewed and, if necessary, enhanced. | Guidance to be reviewed by 31 March 2014 |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>   | <b>Timeline</b>     |
|----------------|---|--|---------------------|
| 7.3.           | Product categorisations used on PCS should be reviewed to ensure that they are as accurate as possible for construction projects. | Work to be done to ensure a sufficiently granular identification of the actual business activity of potential suppliers and sub-contractors. | By the end of 2014. |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>                      | <b>Timeline</b> |
|----------------|--|---|-----------------|
| 7.3            | SPCD should assess the current performance of the PCS systems through user feedback to ensure high standards are being achieved and are capable of being maintained following adoption of wider usage. | User feedback should be sought in a structured way. | Ongoing         |

| Section | Recommendation   | Implementation measures   | Timeline           |
|---------|--|---|--------------------|
| 7.3     | <p>Additional guidance for the public sector should be developed to ensure that the standard PQQ is used in a way which is proportionate and relevant to the needs of construction procurement and monitor practices to ensure that this principle is achieved. The standard PQQ should continue to be refined and, where a pre-qualification stage is being used, its use should be mandated.</p> | <p>The standard PQQ should continue to be refined and its use monitored with a view to maximising uptake.</p> <p>The use of the standard PQQ should be monitored to ensure it is proportionate.</p> | Ongoing            |
|         | <p>SPCD along with bodies such as RIAS and RICS should work collaboratively to develop consultancy / specialist services suites of standard questions for the standard PQQ.</p> <p>Other requests for specialist suites of questions should also be considered and assessed by SPCD as they arise.</p>   | Collaboration on standard question sets should be instigated.   | By the end of 2014 |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>   | <b>Timeline</b>                                |
|----------------|--|--|--|
| 7.3            | The use of Quick Quote should become the norm for works contracts worth less than £500,000, and public bodies should consider using Quick Quote for awarding construction-related contracts worth less than the proposed thresholds in the Procurement Reform Bill (£2 million for works and £50,000 for supplies and services). | Guidance should be developed on what factors authorities need to take into account when deciding whether to use Quick Quote at a higher level. | Guidance to be reviewed by the summer of 2014. |
|                | When using Quick Quote, public bodies should be able to demonstrate a clear audit trail to contract award, to ensure transparency and accountability.  | Contracting authorities to consider their internal procedures and amend as necessary.  | By the end of 2014.                            |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>  | <b>Timeline</b> |
|----------------|---|---|-----------------|
| 7.3            | The use of PCS Tender should be mandatory for creating ITTs, using standard question sets as the basis, and submitting tender returns – whether individual contracts or frameworks. | Work should be done to ensure appropriate training is provided to allow each authority to be confident at using PCS Tender. | By summer 2014  |

## 8. Sustainable procurement, innovation and emerging technologies

| Section | Recommendation  | Implementation measures  | Timeline  |
|---------|---|--|---|
| 8.2     | Good, detailed, community benefits guidance exists currently on the Scottish Government website, but it is lengthy and should be reviewed and integrated within a wider Construction Procurement Journey. This guidance should include:   |  |   |
| 8.2     | The requirement that contracting authorities should have a clear strategic understanding of what they want community benefits to deliver through their public procurement for the sustainability of the Scottish and local economy and the community within which the project is being delivered. The public body should set out its strategic objective and ask the contractor to set out in its tender how it will meet that objective. | Existing guidance should be reviewed and, if necessary, enhanced to fully cover construction.                              | By the summer of 2014                                     |
|         |   | This guidance should be adopted by contracting authorities.  | By the end of 2014  |
|         |   | As part of the PCA process, organisations should demonstrate that they have undertaken due consideration of this guidance. | Built into PCAs in time for the 2015 round of assessments |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>   | <b>Timeline</b>       |
|----------------|--|--|-----------------------|
| 8.2            | Guidance to contractors to help them to design and deliver appropriate community benefits. | Tools should be developed for designing and assessing community benefit clauses which are appropriate and proportionate. | By the summer of 2014 |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>   | <b>Timeline</b>       |
|----------------|--|--|-----------------------|
| 8.2            | Guidance to contracting authorities to assist an open consideration of community benefit proposals at ITT stage. | Tools should be developed for designing and assessing community benefit clauses which are appropriate and proportionate. | By the summer of 2014 |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>  | <b>Timeline</b>       |
|----------------|---|---|-----------------------|
| 8.2            | The promotion of continuity and completion of apprenticeships. One means of doing this may be through encouraging the public sector and industry to work together to develop a shared apprenticeship model that refocuses the emphasis on the completion of apprenticeships and the practicability of such models should be investigated. | Guidance should be developed on the best means of using community benefit clauses to promote the continuity of employment of apprentices.   | By the summer of 2014 |
|                |   | The practicability of shared apprenticeship models should be explored and guidance developed. This should be done in conjunction with Skills Development Scotland who are being charged by the Scottish Government with responsibility for developing pilot models. Reference should be made to the principles set out in the Homes for Scotland scoping report prepared by Glasgow University and published in March 2013. |                       |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>   | <b>Timeline</b>       |
|----------------|---|--|-----------------------|
| 8.2            | Monitoring by public sector clients of performance in relation to community benefits delivery, and use of that performance monitoring information as part of overall performance assessment for future contracts whether through frameworks or open processes. This could be done as part of a suite of KPIs. | Guidance to be developed on best practice in monitoring performance on community benefit clauses.  | By the summer of 2014 |
|                |   | Guidance to be developed on how performance on community benefits can be taken into account in future contracts within the bounds of EU law. |                       |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>  | <b>Timeline</b>  |
|----------------|--|---|------------------|
| 8.5            | The Scottish Government should build on some good work by RSLs and others by better incentivising greener construction and promoting modern methods of construction and providing better advice and guidance on renewables technologies. | Guidance should be developed and good practice examples identified  | By 31 March 2015 |
|                |  | The scope for further incentives through the Scottish Government's funding for the affordable housing supply programme should be examined |                  |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>                               | <b>Timeline</b> |
|----------------|---|--|-----------------|
| 8.5            | Construction guidance should be aligned to the wider sustainable procurement agenda in recognition of the potential for construction to demonstrate the benefits of good procurement and should take account of the findings of the Sullivan panel when they are published. | Cross-sectoral progress should be reflected in the guidance. | Ongoing         |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b>  | <b>Timeline</b> |
|----------------|---|---|-----------------|
| 8.5            | The Scottish Government should promote a more coherent joined up approach to sustainability for public sector construction. | Better linkages should be made across Scottish Government to ensure better connections and knowledge sharing. | Ongoing         |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>   | <b>Timeline</b>       |
|----------------|--|--|-----------------------|
| 8.6            | The use of Building Information Modelling (BIM) should be introduced in central government with a view to encouraging its adoption across the entire public sector. The objective should be that, where appropriate, construction projects across the public sector in Scotland adopts a BIM level 2 approach by April 2017. | Resources should be identified and a programme plan for Scottish BIM implementation by 2017 established.   | By 31 March 2014      |
|                |  | When deciding if BIM will add value to a project public sector clients should undertake an assessment of the likely return on investment from its use. | Ongoing               |
|                |  | Guidelines and advice on the use of BIM should be developed.   | By the summer of 2014 |
|                |  | Suitable trial projects should be identified ahead of the 2017 target date and their management co-ordinated centrally.                                | By the end of 2014    |
|                |  | Baseline information should be established to allow proper evaluation of the impact of BIM implementation.   |                       |

## 9. Data as an enabler of reform

| Section | Recommendation   | Implementation measures  | Timeline   |
|---------|--|--|--|
| 9.5     | Action should be taken to ensure robust systems are in place to track all spending on construction by public authorities such that a complete analysis of annual public sector construction spend in Scotland can be easily available. | If necessary, the capability of systems to capture and report this information should be developed, and guidance issued to those contracting authorities who do not currently share data | Before 31 March 2014 to allow the spend for 2014-15 to be captured |
|         |  | Authorities procuring construction spend should submit the detail of their spend to a central system.  | To be gathered initially for the year ending 31 March 2015         |

| Section | Recommendation   | Implementation measures   | Timeline                 |
|---------|--|---|--------------------------|
| 9.5     | Sectoral records of project outturn costs, including what they were estimated to cost at business plan and contract award stages and actual cost on completion, should be developed and maintained so as to provide meaningful benchmark figures for the public sector in Scotland. These records should also record timescales and quality measures to enable a true assessment of performance delivery to be made. | It will initially be necessary to specify precisely what costs are to be recorded and how they are to be recorded in order that the benchmark information can allow valid comparisons to be made on the same basis and to develop guidelines for the submission of costs. | By 30 September 2014     |
|         |  | All authorities should submit benchmark information in the standard agreed format.  | Commencing 31 March 2015 |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>  | <b>Timeline</b> |
|----------------|--|---|-----------------|
| 9.5            | Guidance should be developed on robust management information requirements and should cover baseline data, benchmarks, metrics and KPIs. | Guidance to be developed to assist the collation of a comprehensive data set. | By summer 2014  |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>                                | <b>Timeline</b> |
|----------------|--|---|-----------------|
| 9.5            | Project evaluation should be promoted and should build on the Learning Lessons Approach. | Links to be made with the Learning Lessons programme of work. | By summer 2014  |

## 10. What the industry needs to do

| Section | Recommendation   | Implementation measures  | Timeline        |
|---------|--|--|-----------------|
| 10.2    | The Chief Construction Adviser should hold talks with the Industry Leadership Group and with other trade and professional bodies and representative institutions to agree on how the industry should co-ordinate its efforts | Meaningful dialogue with industry to take place to ensure strong representation and participation. | By 30 June 2014 |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>   | <b>Timeline</b>  |
|----------------|--|--|--|
| 10.3           | <p>The Fair Payment Charter should be promoted more widely as the “norm” within the construction industry. The industry should consider how it can collectively make late payment of suppliers an unacceptable practice</p> <p>When the public sector adopts good practice – such as might relate for example to the appropriate use of retentions, requirements for insurance or the use without alteration of appropriate standard forms of contract – industry should replicate this throughout the supply chain.</p> | The Industry Leadership Group should work with the Public Procurement Reform Board to co-ordinate the drive to change the culture of late payment within the industry. | <p>Industry Leadership Group guidance and plan issued by 30 June 2014</p> <p>Ongoing</p> |

| <b>Section</b> | <b>Recommendation</b>  | <b>Implementation measures</b>  | <b>Timeline</b>    |
|----------------|--|---|--------------------|
| 10.4           | The industry should consider what is prompting ‘suicide bids’, and how to arrest them, so that both the customer and the contractor get a fair deal. | We have suggested that the Scottish Government should re-issue guidance by the summer of 2014 on how to deal with abnormally low bids. The Industry Leadership Group should consider these guidelines and seek to agree its own guidelines for the industry within the limits of the laws relating to anti-competitive behaviour. | By the end of 2014 |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b> | <b>Timeline</b>      |
|----------------|---|--------------------------------|----------------------|
| 10.5           | Industry should use existing sources of guidance and work with the public sector to develop best practice models for the delivery of community benefits, and a shared apprenticeship model. | Industry to develop.           | By 30 September 2014 |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b> | <b>Timeline</b>      |
|----------------|---|--------------------------------|----------------------|
| 10.5           | The industry needs to be ready to embrace modern methods of construction, and new and emerging technologies such as Building Information Modelling. | Industry to consider.          | By 30 September 2014 |

| <b>Section</b> | <b>Recommendation</b>   | <b>Implementation measures</b> | <b>Timeline</b>      |
|----------------|---|--------------------------------|----------------------|
| 10.5           | The industry should consider what industry-led training programmes currently exist for those bidding for public sector work, and whether there is scope for these to be co-ordinated and developed further. | Industry to consider.          | By 30 September 2014 |

## **Appendix 5 – Consultative group members**

As part of our review, we convened two consultative groups (one with a client focus, and one with a primarily industry focus) to help us consider our findings at key stages in the process, in addition to our stakeholder interviews.

The following organisations were represented on these groups, and we are grateful to them for their input:

Advanced Procurement for Universities and Colleges  
Association of Local Authority Chief Housing Officers  
BAM Construction  
Business Fix  
City of Edinburgh Council  
Civil Engineering Contractors Association Scotland  
Clark Contracts  
Convention of Scottish Local Authorities  
Federation of Master Builders  
Glasgow City Council  
Historic Scotland  
Homes for Scotland  
Muirfield Contracts  
Network Rail  
NHS National Services Scotland  
North Lanarkshire Council  
Police Scotland  
Royal Incorporation of Architects in Scotland  
Royal Institute of Chartered Surveyors  
Scotland Excel  
Scottish Building Federation  
Scottish Court Service  
Scottish Enterprise  
Scottish Federation of Housing Associations  
Scottish Fire and Rescue Service  
Scottish Futures Trust  
Scottish Government  
Specialist Engineering Contractors' Group Scotland  
Strategic Investment Board Ltd (Northern Ireland)  
Transport Scotland  
University of the West of Scotland  
West Lothian Council



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