

# CHESHIRE EAST COUNCIL

## Constitution Committee

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**Date of Meeting:** 20<sup>th</sup> September 2012  
**Report of:** Borough Solicitor  
**Subject/Title:** Review of Contract Procedure Rules

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### **1.0 Report Summary**

- 1.1** The purpose of this report is to propose amendments to the Council's Contract Procedure Rules and to seek the approval of the Committee and a recommendation from it to the Council that the amendments be made.

### **2.0 Recommendations**

- 2.1** That the amendments to the Contract Procedure Rules (as set out in the Appendix to this report) be recommended to the Council for approval and the Constitution be amended accordingly.

### **3.0 Reasons for Recommendations**

- 3.1** The Action Plan approved by the recent meeting of the Audit and Governance Committee recognised that the Council needs to ensure robust controls are in place. At its meeting on the 5<sup>th</sup> July the Committee resolved to undertake a further review of the Contract Procedure Rules. A meeting of the Constitution Task Group was held to undertake the review. This report sets out the recommendations of the Group and will support delivery of the Action Plan.

### **4.0 Wards Affected**

- 4.1** All

### **5.0 Local Ward Members**

- 5.1** All

### **6.0 Policy Implications**

- 6.1** None have been identified.

## **7.0 Financial Implications**

- 7.1 There are no direct financial implications associated with the decisions in this report.

## **8.0 Legal Implications**

- 8.1 Any changes to the Constitution need to be agreed by the Council following a recommendation from the Constitution Committee. Any changes which are proposed also need to comply with the relevant statutory requirements.
- 8.2 The Purchase of goods, services and works by the Council as a public sector body is regulated by the Public Contracts Regulations 2006 (the Regulations) which implement into English law the EU procurement regime currently in place throughout the EU.
- 8.3 It is important to note that the Regulations only apply to contracts with a value that exceeds the relevant thresholds. The current thresholds that apply to local authorities are as follows:

SUPPLIES (GOODS)	SERVICES	WORKS
£156,442	£156,442	£3,927,260

- 8.4 However, in undertaking any procurement (including those below the EU threshold) a contracting authority must also comply with the following key principles (derived from the Treaty on the Functioning of the European Union (TFEU) and the fundamental freedoms of the EU):
- Proportionality
  - Mutual recognition
  - Transparency
  - Non-discrimination
  - Equal treatment
- 8.5 In simple terms, the Council is required to act in a transparent way, treating all potential providers equally and in a non-discriminatory way. There are also detailed requirements in relation to the drafting of technical specifications, the requirement to publish contract award notices and submission of returns to the Office of Government Commerce (OGC).
- 8.6 As third parties have a right to take court action for financial loss if there is any failure to comply with the principles, it is extremely important that the Council does comply with the key Principles set out in paragraph 8.4.

## **9.0 Risk Management**

- 9.1 The Action Plan approved by the recent meeting of the Audit and Governance Committee recognised that the Council needs to ensure robust controls are in place. A fundamental review of procedures is being undertaken to ensure that the proper checks and balances are in place to safeguard and ensure proper processes are followed.

## **10.0 Background and Options**

- 10.1 At their meeting on 14 June 2012 members of the Audit and Governance Committee resolved that the Council's Contract Procedure Rules be submitted to the next meeting of the Constitution Committee to further review with a view to increasing the level of Member involvement in decision – making. The Contract Procedure Rules form part of the Council's Constitution and were last reviewed and approved by this Committee on 22 September 2011 and subsequently approved by full Council in October 2011. The Rules set out a framework for the procurement of goods, works and services with a view to achieving value for money and an open and transparent process which complies with best practice and the Councils Procurement Strategy. Detailed guidance on the Contract Procedure Rules can be found on the Council's Procurement Knowledge Map on the centranet site.
- 10.2 At its meeting on 5<sup>th</sup> July the Committee resolved that the Task Group previously appointed by the Committee to review detailed changes to the Constitution be asked to undertake a further review of the Contract Procedure Rules and report back to the Committee's next meeting.
- 10.3 The Task Group met on 9<sup>th</sup> August and a number of matters were considered. The Task Group agreed the following:
- Clarity was required around the responsibilities of Directors which would include ensuring that they took all reasonable steps for the proper administration of contracts and procurement in their Departments
  - Revisions were required to clarify the process, actions and approvals required in respect of exceptions to the rules, non compliance with the rules and urgency
  - Other matters included retaining records, specifications, whole life costs (excluding VAT) and quotations
  - The need for a short Guide to Procurement for Officers to complement the existing Knowledge Map.
- 10.4 In the light of the conclusions reached by the Task Group the contract procedure rules have been amended a copy of which is enclosed at Appendix 1.
- 10.5 The Shared Services Manager undertook to produce the additional guidance on contracts and procurement.

10.6 Members' views are sought on the proposed changes to the Contract Procedure Rules.

#### **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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