

# CHESHIRE EAST COUNCIL

## Governance and Constitution Committee

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**Date of Meeting:** 25 June 2009  
**Report of:** Internal Audit Manager  
**Subject/Title:** Amendments to Finance and Contract Procedure Rules

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### **1.0 Report Summary**

- 1.1 The purpose of this report is to present proposed amendments to the Finance and Contract Procedure Rules

### **2.0 Recommendations**

That Council be recommended to approve

- (1) the amendments to the Finance and Contract Procedure Rules set out in the Appendix; and
- (2) that the Borough Solicitor continue to have authority to approve amendments to the Finance and Contract Procedure rules on an ongoing basis.

### **3.0 Reasons for Recommendations**

- 3.1 To make appropriate amendments to the framework for managing the Authority's financial affairs

### **4.0 Wards Affected**

- 4.1 n/a

### **5.0 Local Ward Members**

- 5.1 n/a

### **6.0 Policy Implications including - Climate change - Health**

- 6.1 None

### **7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)**

- 7.1 None

## **8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)**

- 8.1 The Finance Procedure rules are part of the authority's framework for financial control and the continuous review of these rules contributes to our aim of using resources in the most effective way.

## **9.0 Legal Implications (Authorised by the Borough Solicitor)**

- 9.1 No specific legal implications. The changes recommended are supported by the Borough Solicitor

## **10.0 Risk Management**

- 10.1 The procedure rules contribute to the management of risk in relation to use of resources.

## **11.0 Background and Options**

- 11.1 The Finance and Contract Procedure Rules were approved by full Council on 24<sup>th</sup> February 2009.
- 11.2 In addition, the Borough Solicitor was authorised to make such amendments and additions to the Constitution as were necessary to give effect to the Council's wishes.
- 11.3 During the first few months of the new Authority, various issues have been highlighted where Finance and Contract Procedure Rules require amendment. Those amendments considered to be non-substantive have been approved by the Borough Solicitor under the authority delegated to him, following consultation with the Group Whips.
- 11.4 Those amendments that are considered more substantive are included as an Appendix to this report. The Appendix contains a schedule of the amendments required and the reasons for each change.
- 11.5 Unless expressly delegated, amendments to the Constitution must be approved by full Council, having first received the advice of this Committee

## **12.0 Overview of Year One and Term One Issues**

- 12.1 N/a

## **13.0 Access to Information**

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

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## Amendments to Finance and Contract Procedure Rules

Differences between the “before” and “after” version of the relevant section of the Finance & Contract Procedure Rules are highlighted in italics for ease of identification.

### 1 Exception to Capital Approval process

**Reason:** This exception relates to Highways improvements funded by developers and Rechargeable works and was included previously in Cheshire County Council’s Finance Procedure Rules.

#### Current

#### Proposed

### Capital Monitoring and Amendments to the Capital Programme

**B.33** Where possible, all capital schemes contained within the block provision should be approved through the annual capital programme setting process, within the timetable set out by the Borough Treasurer and Head of Assets and approved by Council in February. Any subsequent further breakdown of block approvals must follow the appropriate approval route, with completion of a delegated decision proforma where necessary.

**B.34** Any ‘in year’ approval sought for capital schemes in excess of £250,000 must be supported by a complete Business Case Template, in the format prescribed by the Borough Treasurer and Head of Assets, which has been endorsed by the officer Capital Appraisal Panel prior to submission to the appropriate Members.

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### **Current**

**B.35** Project managers must ensure that the project specification remains consistent with the approved capital appraisal and continues to represent value for money for the Authority. Where project outcomes or costs alter significantly from those set out in the original appraisal a revised Business Case Template must be completed and submitted to the officer Capital Appraisal Panel.

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### **Proposed**

**B.35** Project managers must ensure that the project specification remains consistent with the approved capital appraisal and continues to represent value for money for the Authority. Where project outcomes or costs alter significantly from those set out in the original appraisal a revised Business Case Template must be completed and submitted to the officer Capital Appraisal Panel.

**B.36** *Wherever possible, expenditure in respect of Highways improvements funded by developers and Rechargeable works should be included in the Capital Programme. Where this is not possible Heads of Service may approve capital expenditure in respect of:*

- *Highway improvements fully funded by developers under Section 278 of the Highways Act 1980, provided that a formal agreement has been completed with the developer*
- *Other rechargeable reinstatement work costing in excess of £10,000*
- *Urgent work to repair, replace or reinstate vehicles, buildings or equipment, where the work is to be fully funded from insurance monies following consultation with the Head of Finance.*

**Current**

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**Proposed**

**B.37** *In addition, Heads of Service may authorise essential design work required in advance of the start of the financial year on capital schemes which are in the programme approved by Council in February.*

## **2 Removal of Framework Agreements from requirement to complete a Delegated Decision form**

**Reason:** To remove the need to complete a Delegated Decision Form where there is a Government or Local Government Framework Agreement already in place, as it was not intended to cover that situation.

### **Current**

### **Proposed**

#### **Other Exceptions to Requirements of Competition**

**E.23** A Delegated Decision form must be completed by the Chief Officer or his designated representative for every exemption listed below and sent for approval to the Borough Treasurer and Head of Assets and the Borough Solicitor. Any request to approve waiving of any Finance and Contract Procedure Rule is also subject to such approvals by the Borough Treasurer and Head of Assets and the Borough Solicitor.

**E.24** Provided that a proposed contract award complies with national and EU legislation and any other Finance and Contract Procedure Rule and subject to the Chief Officer or his designated representative keeping a record of the reasons, reported annually to the Borough Treasurer and the Head of Assets, then the competition requirements may not apply to:

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**E.24** Provided that a proposed contract award complies with national and EU legislation and any other Finance and Contract Procedure Rule and subject to the Chief Officer or his designated representative keeping a record of the reasons, reported annually to the Borough Treasurer and the Head of Assets, then the competition requirements may not apply to:

### Current

- The purchase of goods or services or the execution of works which in the opinion of the appropriate Chief Officer or his/her Authorised Officer and the Borough Treasurer and the Head of Assets is certain are obtainable only from one source or contractor, and where no reasonably satisfactory alternative is available;
- The purchase of a product required being compatible with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure as approved by the Chief Officer;
- The instruction of, advice from, or service provided by Counsel or, by exception, Solicitors to act on the Council's behalf;
- ***Procurements made from “Call Off” Contracts and Framework Agreements that have been subjected to competition or through ,or on behalf of, any local authority or Government consortium, association or similar body provided that tenders or quotations have been invited by these bodies and contracts placed in accordance with their procedures which are broadly equivalent to these Rules and also comply with any National or EU legislation;***
- Special education or social care contracts if, in the opinion of the Chief Officer, following consultation with the Borough Solicitor and the Borough Treasurer and the Head of Assets, it is considered

### Proposed

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- The purchase of a product required being compatible with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure as approved by the Chief Officer;
- The instruction of, advice from, or service provided by Counsel or, by exception, Solicitors to act on the Council's behalf;
- Special education or social care contracts if, in the opinion of the Chief Officer, following consultation with the Borough Solicitor and the Borough Treasurer and the Head of Assets, it is considered the Client's interests are best met if there is exemption from the competition rules;
- The exercise of statutory grant aid powers delegated to a Chief Officer or his/her Authorised Officer (which shall be specified by that Chief Officer or his designated representative in each case);
- Circumstances which in the opinion of both the Borough Treasurer and Head of Assets and Borough Solicitor warrant an exception to the

### **Current**

the Client's interests are best met if there is exemption from the competition rules;

- The exercise of statutory grant aid powers delegated to a Chief Officer or his/her Authorised Officer (which shall be specified by that Chief Officer or his designated representative in each case);
- Circumstances which in the opinion of both the Borough Treasurer and Head of Assets and Borough Solicitor warrant an exception to the requirements for competition, to include, but not limited to when an emergency requires an immediate contract (which should in any event be procured from an approved list of suppliers where available) or when exceptionally the Chief Officer his/her Authorised Officer considers that is inappropriate in the interests of the efficient management of the service;
- Any other general circumstances, up to the EU threshold, as agreed by both the Borough Treasurer and Head of Assets and the Borough Solicitor.

### **Proposed**

requirements for competition, to include, but not limited to when an emergency requires an immediate contract (which should in any event be procured from an approved list of suppliers where available) or when exceptionally the Chief Officer his/her Authorised Officer considers that is inappropriate in the interests of the efficient management of the service;

- Any other general circumstances, up to the EU threshold, as agreed by both the Borough Treasurer and Head of Assets and the Borough Solicitor.