

# CHESHIRE EAST COUNCIL

## REPORT TO: Audit and Governance Committee

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**Date of Meeting:** 20th November 2014  
**Report of:** Chief Operating Officer  
**Title:** Compliance with Contract Procedure Rules  
**Portfolio Holder:** Councillor Peter Raynes

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### 1.0 Report Summary

1.1 The purpose of the report is, as required by the Constitution, to update the Committee on Compliance with Contract Procedure Rules (CPRs) and also to provide an outline of the improvements being implemented via procurement that involve and require changes to the Contract Procedure Rules.

### 2.0 Recommendation

2.1 To note:

- i) the update on Compliance with CPRs since March 2014.
- ii) that Contract Procedure Rules have been reviewed recently and a revised and updated set of Rules will be presented to Constitution Committee on 19<sup>th</sup> November and thereafter to full Council on 11<sup>th</sup> December, for approval.

### 3.0 Reasons for Recommendation

3.1 The Audit and Governance Committee has a key role in overseeing governance arrangements and ensuring the Council has appropriate policies and mechanisms to safeguard resources in place.

3.2 Contract Procedure Rule E11 currently states that *“a report will be made to the Audit and Governance Committee, at least on a half yearly basis, setting out the number of non-compliance instances in the previous period, broken down by Service, and a description of exceptional circumstances”*.

### 4.0 Wards Affected

4.1 All wards.

### 5.0 Local Wards Affected

5.1 Not applicable.

## **6.0 Policy Implications**

- 6.1 Any changes to the Constitution, including Finance and Contract Procedure Rules, arising from the current review are required to be approved by the Constitution Committee and full Council.

## **7.0 Financial Implications (Authorised by the Chief Operating Officer)**

- 7.1 Whilst there are no direct financial implications associated with the decisions requested, the changes being implemented via the Procurement Team will help to continue to improve the delivery of value for money and also allow more analysis of the exceptions/requests to be reported to the Procurement Board at each of its meetings.

## **8.0 Legal Implications (Authorised by the Head of Legal Services)**

- 8.1 This report is being submitted to comply with the Council's Constitution and in particular rule E11 of the Finance and Contract Procedure Rules ("the Rules"), which provides that reports should be submitted to the Audit and Governance Committee setting out instances of non-compliance with the Council's rules.
- 8.2 All employees must ensure that they use any Council or other public funds entrusted to them through their job role in a responsible and lawful manner. Employees must also seek to ensure value for money and take care to avoid the risk of legal challenge to the Council in relation to the use of its financial resources. The Council's Officer Delegations, Finance and Contract Procedure Rules and Operating Procedures must, therefore, be followed at all times.

## **9.0 Risk Assessment**

- 9.1 There is a current requirement within the Council's Constitution that a report will be made to Audit and Governance Committee on a half yearly basis on this matter. Failure to submit the report would be a breach of the Constitution.

## **10.0 Background and Options**

- 10.1 During 2011/12, a number of concerns were raised regarding the content and timeliness of Delegated Decisions to waive Finance & Contract Procedure Rules. As a result a revised procedure was adopted in May 2012. There were subsequently further improvements to the process, in January 2013 and May 2013.
- 10.2 An internal audit review of the operation and use of Delegated Decisions was undertaken in summer 2013; the findings and recommended actions from which, were reported back to this Committee in September 2013. All

recommendations from the audit were implemented and also fed into the review of Contract Procedure Rules (see 10.5 below).

- 10.3 Further improvements were introduced in December 2013, as reported to the Committee in March 2014, when a revised procedure was introduced that has simplified the process and made it more efficient and appropriate, whilst still in line with the Constitution. This led to one new consolidated form being used as compared to the three previously used. This new approach has increased the rigour of the process and encouraged greater compliance and will lead to a reduced number of forms over time.

#### Summary (January – June 2014)

- 10.4 The new 'WARN' (Waivers and Record of Non Adherences) process records the following:

- § **Waivers to requirements of competition** – these are agreed waivers in accordance with E23/E24 of the current Contract Procedure Rules.
- § **Non Adherences to Contract Procedure Rules**
- § **Unauthorised extensions to existing contracts**

- 10.5 A summary of the Waivers and Non Adherences for the period under review, against the previous total figure reported to Committee in March 2014, is set out below:

	January to June 2014	July to December 2013
	No.	No. <sup>1</sup>
Waiver to requirements of competition	39	
Non Adherence to Contract Procedure Rules	10	
Unauthorised extensions	0	
<b>Total</b>	<b>49<sup>2</sup></b>	<b>45<sup>2</sup></b>

#### Notes:

<sup>1</sup> The analysis of waivers/non-adherences began in December 2013, so is not available for the July – December 2013 period.

<sup>2</sup> An analysis by service has not been produced given the Council restructure last year and therefore lack of any meaningful comparison between periods.

- § The largest single reason for waivers and/or non-adherences is that of urgency/efficiency of the service, sometimes resulting from a lack of planning. Many relate to instances of additional work e.g. where consultants have been appointed and additional work has been identified following completion of the original engagement, where going through a further tendering process may delay the allocation of funds or lose vital

knowledge. The engagement of interim officers falls into this category. The Procurement Board analyses all WARNs at each of its meetings and has explored trends and issues arising. The use of interims and consultants to assist with the improvement required as part of the Ofsted Improvement plan was one major factor earlier in the year. A framework for consultants is currently being developed to allow for the employment of senior consultants and interims, which would have reduced the number of WARNs by 15.

- § Other significant areas include situations where there is a sole provider e.g. maintenance and support to legacy ICT systems. There are also a number of cases where there are issues of client welfare, in provision of social care or educational services, which influence the decision making process.

### **Update (July 2014 to date)**

- § There is currently a Procurement Improvement Programme underway. One of the key areas for changes is the re-drafting of Contract Procedure Rules which underpin all Commissioning and Procurement Activity.

- § There will be a new 'risk based sourcing' approach which essentially assesses the risk, value and complexity of procurements. The key objective is to support a more commercial approach ensuring best value with a balanced attitude to risk. The changes to Contract Procedure Rules will also simplify processes, particularly below European Union thresholds which supports the delivery of savings and cost avoidance, whilst making it easier for local/all companies to bid for Council work.

- § It is envisaged that the risk based sourcing approach will facilitate a reduction in waivers due to quicker/leaner processes.

- § Future reporting of waivers and non-adherences and any issues resulting from the waiver process will be regularly reported and analysed by the Procurement Board.

- § Corporate Leadership Board has recently started receiving monthly analyses of expenditure over £5,000 to enable them to understand and review the information for their particular areas of spends. Internal Audit will also be sample checking a number of transactions. This process will give expenditure more visibility, a higher profile and provide CLB and Members with greater assurance and control.

## **11.0 Access to information**

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

Name: Peter Bates  
Designation: Chief Operating Officer  
Tel No: 01270 686013  
Email: [peter.bates@cheshire.gov.uk](mailto:peter.bates@cheshire.gov.uk)