

Constitution Committee

Date of Meeting: 22 March 2018

Report Title: Changes to the Contract Procedure Rules

Portfolio Holder: Councillor Paul Bates, Finance and Communication

Senior Officer: Jan Willis – Interim Executive Director of Corporate Services

1. Report Summary

- 1.1. The Council has recently undertaken a comprehensive review of the Constitution, with the new Constitution coming into operation on the 1st January 2018. During the review, some amendments to the Contract Procedure Rules were overlooked due to the vast amount of amendments taking place. This report brings the changes which were overlooked during the review back to the Constitution Committee for approval.
- 1.2. The proposed changes are appended to this report. They are mainly operational which seek to further improve efficiency and governance.
- 1.3. There are two substantial changes proposed to the Rules. The first is the inclusion of an exemption to the Contract Procedure Rules within part 7 and the second is making operational expenditure, which is already within approved Council budgets, exempt from being a Key Decision.

2. Recommendation

- 2.1. That the Committee approve the revised changes to the Contract Procedure Rules as appended to this report.

3. Reasons for Recommendation/s

- 3.1. The Council has recently undertaken a review of the Constitution which was approved for implementation from the 1st of January 2018. During the review some amendments to the Contract Procedure Rules were overlooked. This report brings the changes overlooked back for review and approval by the Constitution Committee.
- 3.2. The proposed changes are mainly operational which seek to further improve efficiency and governance.

4. Other Options Considered

- 4.1. That the Committee do not agree to the proposed changes meaning the Council will continue to work within the current Contract Procedure Rules within the Constitution.

5. Background

- 5.1. The Council has recently undertaken a review of the Constitution which was approved for implementation from the 1st of January 2018. During the review some amendments to the Contract Procedure Rules were overlooked.
- 5.2. The proposed changes seek to further improve organisational efficiency and good governance.
- 5.3. There are two substantial changes proposed to the Rules. The first is the inclusion of an exemption to the Contract Procedure Rules within part 7, Waivers and the second is making operational expenditure, which is already within approved Council budgets, exempt from being a Key Decision.
- 5.4. The Contract Procedure Rules state that any expenditure above £10,000 and below the EU Threshold services should seek three quotations to ensure value for money. However there are examples where only one approved supplier is available due to copyright material, unique technology or as a result of conditions where the Council is receiving grant funding. The proposal is to give an exemption to the Contract Procedure Rules where no reasonable alternative or substitute exists and the absence of competition is not as a result of an artificial narrowing down of the procurement. In this instance there would be no need to complete the WARN process.
- 5.5. Notwithstanding the above exemption, the agreement of the Procurement Manager must be sought prior to any action being taken, except where there is a need to take urgent action to safeguard the Council's interests or delay would expose the Council to significant risk, in which case the action must be reported at the earliest opportunity, retrospectively, to the S.151 Officer and Director of Legal Services and the relevant Executive Director.
- 5.6. Under the current Constitution all expenditure above £1m is a Key Decision. This means that all expenditure above this threshold requires a Cabinet decision (or delegation to an officer) to enter into a contract. This includes day to day operational expenditure such as office cleaning materials, library books, stationery and Microsoft licences. This adds time

and additional work to the commissioning and procurement process to gain approval to proceed for business as usual expenditure.

- 5.7. Some authorities have included an exemption within the definition of a Key Decision which excludes operational expenditure, irrespective of contract value. This exemption means business as usual activity does not need to go through Cabinet. This report recommends that Cheshire East Council adopts the same approach, allowing the procurement, renewal or extension of contracts that relate to operational expenditure for which there is budget approval to proceed without needing further Cabinet approval. Approval as to whether it is day to day operational expenditure would sit with the newly formed Commissioning and Procurement Board. The authority to enter into the contract would still require sign off by the relevant Executive Director.

6. Implications of the Recommendations

6.1. Legal Implications

- 6.1.1. Section 37 of the Local Government Act 2000 and guidance issued thereunder requires the Council to keep its Constitution up to date and regularly review it. Under the Act the Secretary of State could direct what information a local authority should include within its constitution. Under section 37, the secretary of state directed that local authorities financial rules or regulations or such equivalent provisions as the local authority may have in place and rules, regulations and procedures in respect of contracts and procurement whether specified in the local authority's standing orders or not, should be included in the constitution.

6.2. Finance Implications

- 6.2.1. The Constitution incorporates the Finance Procedure Rules which set out the rules relating to the financial management of the Council, including financial planning; risk management and control of resources; and financial systems and procedures. Clearly there are important relationships between the Finance and Contract Procedure Rules, as exemplified in this report.
- 6.2.2. Whilst the recommendations in the report are in respect of changes in operational practice, there are no direct financial, budgetary implications relating to the amendments.

6.3. Equality Implications

- 6.3.1. If this section indicates that an Equality Impact Assessment has been completed it is to be included as an Appendix to the report.

6.4. Human Resources Implications

6.4.1. None

6.5. Risk Management Implications

6.5.1. Legal and financial implications are recorded above.

6.5.2. The approval of day to day operational expenditure above £1m will sit with the Commissioning and Procurement Board which is chaired by Jan Willis Interim Executive Director or Corporate Service.

6.6. Rural Communities Implications

6.6.1. There are no direct implications for rural communities.

6.7. Implications for Children & Young People

6.7.1. There are no direct implications for children and young people.

6.8. Public Health Implications

6.8.1. There are no direct implications for public health.

7. Ward Members Affected

7.1. All ward members

8. Access to Information

8.1. As appended to this report. Additional information may be requested.

9. Contact Information

9.1. Any questions relating to this report should be directed to the following officer:

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