

CHESHIRE EAST COUNCIL

Audit and Governance Committee

Date of Meeting: 29th September 2011
Report of: Director of Finance and Business Services and Borough Solicitor
Subject/Title: Breach of the Council's Contract Procedure Rules

1.0 Report Summary

- 1.0 This report addresses a breach of Contract Procedure Rules (CPR's) outlining the reasons for the non-compliance and the steps taken to prevent a re-occurrence.

2.0 Recommendation

- 2.1 Members are asked to note the information contained in the report and the actions that are being undertaken by officers in response to the findings.

3.0 Reasons for Recommendations

- 3.1 The Council's Contract Procedure Rules set various value thresholds at points where commensurate competition should be undertaken by officers to ensure that value for money is being achieved and that all tender opportunities are fairly and appropriately advertised to suppliers. The thresholds within CPR's at 1 April 2011 were:

	Total Value	Procedure to follow where no Contract exists
Informal	Below £10,000	E-mail /telephone quotation(s)
	Above £10,000 but below £50,000 for goods, services and works.	Comparison of written quotations from at least 3 bidders
Formal	Above £50,000 but below the EU threshold for goods, services and works.	Formal tender process from at least 3 suppliers.
	Above the EU threshold for goods, services and works.	Tender process in accordance with EU Procurement Rules.

- 3.2 The difference between the formal tendering process for contracts above £50,000 but below the EU threshold and a full tender process in accordance with EU Rules is that the EU Rules have mandatory procedures and mechanisms which the Council must comply with.

- 3.3 Where it becomes apparent that a Service has failed to comply with Council's Contract Procedure Rules, the Chief Officer or designated representative must issue a report outlining the reason for the non compliance and the steps taken to prevent a re-occurrence. The report must be submitted to the Director of Finance and Business Services and the Borough Solicitor before being reported to the Audit and Governance Committee.

4.0 Wards Affected

- 4.1 Not applicable.

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications

- 6.1 None identified.

7.0 Financial Implications (Authorised by the Director of Finance and Business Services)

- 7.1 Contained within the report.

8.0 Legal Implications (Authorised by the Borough Solicitor)

- 8.1 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. 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

- 8.2 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

- 8.3 In simple terms, the Council is required to act in a transparent way, treating all potential providers equally and in a non-discriminatory way.

9.0 Risk Management

- 9.1 Breaches of the Council's Contract Procedure Rules expose the Council to the risk of a failure to secure best value in terms of cost, quality and sustainability. Furthermore, as third parties have a right to take court action for financial loss if there is any failure to comply with the principles set out in paragraph 8.2 it is extremely important that:

- the Council complies with Contract Procedure Rules and EU Procurement Rules
- where it becomes apparent that a breach has occurred the risks are understood at a sufficiently senior level and steps are taken to prevent a re-occurrence.

10.0 Background and Options

- 10.1 Internal Audit has carried out a review of the arrangements in place for the collection of waste from Council premises in the former Crewe and Nantwich Borough Council area and the process that was followed in procuring this service prior to its commencement on 1 April 2011.
- 10.2 The review concluded that poor practice has resulted in a procurement process that breaches the Council's Contract Procedure Rules. The reasons for non compliance and the steps taken to prevent a reoccurrence are described below.
- 10.3 Prior to Local Government Reorganisation each of the former district councils operated a trade waste collection service. During 2007/08 a decision was made to cease these operations and as a consequence the services were sold to a private contractor in 2008/09.
- 10.4 Following the expiry of the former District Council contracts for the collection of commercial waste, the successful bidder offered the Councils, and their former customers, new contracts. This resulted in the waste generated at the Macclesfield and Congleton Borough Council properties being collected by the private sector.
- 10.5 Crewe and Nantwich Borough Council, however, continued to collect waste from its own premises following the sale. This practice continued under Cheshire East until 1 April 2011 when, following an exercise to reorganise the domestic waste collection rounds, there was no longer capacity to carry out non domestic collections. Consequently, arrangements for the collection of residual and recyclate waste from 21 Council properties needed to be in place by 1 April 2011.

- 10.6 Whilst the responsibility for making these arrangements and the effectiveness of the handover is subject to some disagreement, Officers have confirmed that discussions were held both prior to and post 1 March 2011 acknowledging the need to take a corporate approach to the procurement of waste collection services to Council buildings. Although the cessation of the service to the 21 properties put the discussions on a much more formal basis, it was not possible to come to an agreement as to who would sponsor this exercise and where the budget for the procurement, and in particular specialist support, would come from.
- 10.7 Furthermore, by the time the discussions became more formal it was acknowledged that the timescales necessary to complete this type of exercise would not have provided a solution for the 21 properties by 1 April 2011. Hence an interim solution was put in place, whereby individual service agreements, in respect of each property, were entered into with the contractor referred to in 10.3. It is estimated that the value of the individual agreements range from £270 p.a. to £10,300 p.a. with a total value of £63,000. Unfortunately, this procurement was not conducted in a manner that is compliant with the Council's Contract Procedure Rules, in particular, the invitation of competitive bids nor is it consistent with the Council's Procurement Strategy and Sustainable Procurement Guidance.
- 10.8 The Committee should note that whilst it has not been possible to ascertain details of who provides waste collection services for all of the remaining Cheshire East properties or under what arrangements these services are delivered, it is generally accepted that the main provider is the company referred to in 10.3 via individual service agreements.
- 10.9 The required actions in response to the findings in the Internal Audit report are as follows:
- A procurement exercise for the disposal of waste at Council premises should be undertaken. This process needs to be commensurate with the scale and nature of the Council's requirements and conducted in a manner compliant with EU directives, the Procurement Strategy, Sustainable Procurement Guidance and Contract Procedure Rules.
 - A report should be presented to Audit & Governance Committee detailing the breach of Contract Procedure Rules and the steps taken to rectify this in line with the Constitution.
 - The Council's Section 151 Officer and Monitoring Officer should consider whether it is appropriate for any further action to be taken in relation to the breach of Contract Procedure Rules.
- 10.10 In response to the required actions in 10.10 above, an appropriate procurement exercise is now underway and this report complies with

the second action. With regard to the third action the S151 Officer and the Monitoring Officer do not propose to take any additional direct action, however, lessons will need to be learnt from this situation and the risk of wider breaches will have to be mitigated. A Procurement improvement plan is already well underway in answer to the areas requiring greater attention as reported in the Annual Governance Statement for 2009/10.

10.11 The following actions are currently underway:

- The development of an effective Procurement delivery model for Cheshire East
- The acceleration of work to fully develop Spend-Pro (AGMA spend and supplier analysis tool), the Contracts Register and the three-year forward plan for Cheshire East
- The development and establishment of an AGMA shared service/collaboration as part of the AGMA Procurement project
- The agreement of new Procurement Strategy principles and the new Procurement delivery model
- The identification of the work that will be undertaken with the Extended Management Team to implement and embed the Procurement delivery model
- The update of the Contract Procedure Rules co-ordinated by the Borough Solicitor and the Director of Finance and Business Services.
- The update of the Council's Procurement Strategy to be effective from 1st April 2012
- The re-launch of the Procurement Board with a new remit based on the agreed Procurement Strategy aims and the need to drive through the delivery model across the Council

10.12 Furthermore, Members are asked to note that the Internal Audit Plan for 2011/12 includes provision for reviewing the Council's procurement arrangements and that this work is due to commence in quarter 3.

11.0 Access to Information

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

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