

# CHESHIRE EAST COUNCIL

## Constitution Committee

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**Date of Meeting:** 5<sup>th</sup> July 2012  
**Report of:** Borough Solicitor  
**Subject/Title:** Delegated Decisions – Waiver of Contract Procedure Rules

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### **1.0 Report Summary**

- 1.1 This report outlines the interim procedure and revised process for the waiver of the Councils Contract Procedure Rules under the Delegated Decision Process and seeks Members views on whether any further amendments are necessary.

### **2.0 Recommendations**

- 2.1 That the Committee note the revised interim procedure for the Waiver of Contract Procedure Rules under the Delegated Decision Process.
- 2.2 Member's views are sought on the scope of the fundamental review of the Delegated Decision process, timescale for review and the suggested increase of Member involvement in the procedures within the Contract Procedure Rules.

### **3.0 Reasons for Recommendations**

- 3.1 As a result of concerns arising from the use of Delegated Decisions an interim procedure has been implemented which strengthens the original process for signing off such decisions pending review of the process by elected Members. At its meeting on the 14 June 2012 members of the Audit and Governance Committee approved an action plan indicating a fundamental review of the application of Delegated Decisions would be undertaken, the results of which would be reported to that Committee. This report forms part of that fundamental review process.

### **4.0 Wards Affected**

- 4.1 All

### **5.0 Local Ward Members**

- 5.1 All

## **6.0 Policy Implications (including carbon reduction and health)**

6.1 N/A

## **7.0 Financial Implications (authorised by Director of Finance and Business Services)**

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

## **8.0 Legal Implications (authorised by Borough Solicitor)**

8.1 This report does not deal with general Delegated Decisions under the Council's Officer Scheme of Delegation and is solely in connection with the waiver of the competition rules under E.23 and E.24 of the Contract Procedure Rules.

8.2 Under the Contract Procedure Rules in a number of limited circumstances exemptions to the normal requirements for the procurement of goods, works and services may be permissible. The Rules requires a Delegated Decision countersigned by both the Borough Solicitor and Director of Finance and Business Services to waive the normal competition requirements. The detailed requirements are set out in E.23 – E.26 of the Rules.

## **9.0 Risk Management**

9.1 The Action Plan approved by the recent meeting of the Audit and Governance Committee recognises that in practice the current DD process has not been sufficiently robust and requires a fundamental review 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 Council's 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 The Rules require different procedures dependent upon the contract value and sets out the various advertising and competition requirements. There are a number of specified exceptions to the normal requirements laid out in the Contract Procedure Rules and these are set out in full at E.23 – E.26 inclusive (see Appendix 1).

10.3 In summary E.23-E.24 provides that an exemption may be sought to waive the Council's internal requirements in the following circumstances;

- Goods, services or works are obtainable from one source or contractor and no reasonably satisfactory alternative is available
- Products need to be compatible with existing installations and procurement from another source would be uneconomic
- Instructions to Counsel or external solicitors
- Special education or social care contracts
- Exercise of statutory grant aid powers delegated to a Chief Officer
- Circumstances warranting an exception to the normal requirements for competition including emergencies or in the efficient management of the service
- Any other circumstances up to the EU threshold as agreed by the Borough Solicitor and Director of Finance and Business Services.

The procedure requires that where a Chief Officer or his representative intends to seek an exemption he or she must arrange for a Delegated Decision (DD) to be prepared which must be countersigned by the Borough Solicitor and Director of Finance and Business Services.

10.4 The process for the signing of DD's was reviewed and strengthened by the Borough Solicitor and Director of Finance and Business Services in 2011 as follows:

- Review and relaunch of the DD form so that the information was set out fully and the circumstances and reasons for the waiver made clear
- Improvements to the Knowledge map to clarify and explain fully the DD process
- Officers in Procurement, Legal and Finance to advise on process, check and sign off the DD form with any comments prior to being submitted for countersignature by the two statutory officers
- Scheduled weekly meetings of the two statutory officers to discuss and sign off any DD's
- All DD's scanned and kept as a record by the Director of Finance and Business Services

10.5 As a result of concerns arising from the submission of two DD's in connection with the development of a Waste Transfer Station at Lyme Green it was considered appropriate to further review and revise the DD procedure on an interim basis pending the fundamental review of the

process as approved by the Audit and Governance Committee at its meeting on the 14 June 2012.

10.6 The new revised interim process now requires;

- The decision taking officer to draft an initial DD to be sent to officers within procurement, legal services and finance for approval.
- The DD to be redrafted in line with any resulting comments from the three approving officers
- Decision taking officer to send the completed DD to their Portfolio Holder for approval
- If Portfolio Holder agrees and supports the DD it will be submitted for consideration at the weekly CMT meeting
- The decision taking officer and three approving officers to attend CMT to discuss and provide justification for the DD
- CMT will discuss the DD and either approve or reject the DD
- Signed DDs will be scanned in and kept as a record by the Director of Finance and Business Services and will be available on sharepoint
- A copy of the signed DD will be sent to the appropriate Strategic Director to be forwarded to the decision taking officer
- Decision taking officer to liaise with legal services to ensure a contract is signed and all recommendations within the DD are actioned

A copy of the revised process is attached at Appendix 2

10.7 In addition the DD form has been further reviewed and specifically requires details of the contract value and funding to be clearly endorsed on the face of the DD (Appendix 3).

10.8 A separate form has been devised for those circumstances where there has been non compliance with the requirements of the rules (Appendix 4).

10.9 Revised guidance has been issued and amendments made to the process within the Centranet (Appendix 5).

10.10 Members' views are sought on the scope of the fundamental review of the DD process and on the timescale of the review. Views are particularly sought on any further Member involvement in the DD process and in the procedures as set out under 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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