

CHESHIRE EAST COUNCIL

Council

Date of Meeting: 13 December 2012
Report of: Borough Solicitor
Subject/Title: Review of Contract Procedure Rules

1.0 Report Summary

- 1.1 The purpose of the report is to seek approval to the proposed amendments to the Council's Contract Procedure Rules.

2.0 Recommendation

That the amendments to the Councils Procedure Rules (as set out in the Appendix to this report) be approved and the Constitution amended accordingly.

3.0 Reasons for Recommendations

- 3.1 At its meeting on the 5th July 2012 the Constitution Committee resolved to undertake a further review of the Contract Procedure Rules. The subsequent report to Council on 11 October 2012 setting out a number of recommendations for review was deferred for consideration to the next meeting of Council.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 There are no identifiable policy implications

7.0 Financial Implications

- 7.1 There are no direct financial implications associated with this report.

8.0 Legal Implications

- 8.1 Any changes to the Contract Procedure Rules need to comply with the relevant statutory requirements.
- 8.2 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.
- 8.3 It is important to note that 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

- 8.4 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
- 8.5 In simple terms, the Council is required to act in a transparent way, treating all potential providers equally and in a non-discriminatory way. There are also detailed requirements in relation to the drafting of technical specifications, the requirement to publish contract award notices and submission of returns to the Office of Government Commerce (OGC).
- 8.6 As third parties have a right to take court action for financial loss if there is any failure to comply with the principles, it is extremely important that the Council does comply with the key Principles set out in paragraph 8.4.

9.0 Risk Management

- 9.1 Following on from the work of the Audit and Governance Committee a fundamental review of relevant procedures is being undertaken to ensure that the proper checks and balances are in place to safeguard and ensure proper processes are followed.

10.0 Background

- 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 by the Constitution 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 At its meeting on 5th July 2012 the Constitution Committee resolved that the Task Group previously appointed by the Committee to review detailed changes to the Constitution be asked to undertake a further review of the Contract Procedure Rules and report back to the Committee's next meeting. A meeting of the Constitution Task Group was held to undertake the review and make recommendations to the full Committee on 20 September 2012
- 10.3 The Task Group met on 9th August 2012 and a number of matters were considered. The Task Group agreed the following:-
- Clarity was required around the responsibilities of Directors which would include ensuring that they took all reasonable steps for the proper administration of contracts and procurement in their Departments
 - Revisions were required to clarify the process, actions and approvals required in respect of exceptions to the rules, non compliance with the rules and urgency
 - Other matters included retaining records, specifications, whole life costs (excluding VAT) and quotations
 - The need for a short Guide to Procurement for Officers to complement the existing Knowledge Map.
- 10.4 A number of additional amendments were agreed at the Constitution Committee including the definition of financial thresholds, the recording of training needs and the breakdown of non compliances.
- 10.5 **Members formally RESOLVED that**
- (1) The proposed amendments to the contract procedure rules, including the additional amendments proposed by the Director of Finance and Business Services at the meeting, be approved for recommendation to Council subject to the further amendments agreed by Members;**

- (2) The Vice – Chairman of the Committee be authorised to determine any final amendments to the contract procedure rules in consultation with the Director of Finance and Business Services**
- (3) A final updates version of the rules incorporating all amendments be produced for consideration by Council; and**
- (4) Council be recommended to approve the amended contract procedure rules and the consequential amendments to the Constitution**

10.6 The amended rules are appended to the report for Members formal approval. Since the last meeting of the Council the Vice – Chairman has exercised his delegated authority to add the Borough Solicitor as an authorised signatory at Rule E23 and E24 and this is reflected in the amended Rules now attached.

11.0 Access to Information

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

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