

CHESHIRE EAST COUNCIL

REPORT TO: Audit and Governance Committee

Date of meeting: 27 September 2013
Report of: Interim Chief Operating Officer
Title: Compliance with Contract Procedure Rules

1.0 Report Summary

- 1.1 The purpose of the report is, as required by the Constitution, to provide the Committee with details of the operation of the procedure for Delegated Decisions to waive Contract Procedure Rules and Non-Compliances with Contract Procedure Rules and an update of those decisions, in order to see whether procedures are being complied with.

2.0 Recommendation

- 2.1 To note that procedures have been revised in this area since the last report to Committee in September 2012.
- 2.2 To note the update on Delegated Decisions and Non-Compliances since September 2012.
- 2.3 To note that further reports on the process, and its robustness, will be brought to the Committee as part of the regular monitoring of the Annual Governance Statement Action Plan.

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 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 The Interim Monitoring Officer has established a group to undertake a full review of the Constitution and propose and develop improvements where necessary. This will include Finance & Contract Procedure Rules, of which the Delegated Decision and Non-Compliance processes form a part. Subsequent changes to those Rules would result in changes to the Constitution, to be approved by the Constitution Committee and full Council.

7.0 Financial Implications

- 7.1 There are no direct financial implications associated with the decisions requested.

8.0 Legal Implications

- 8.1 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.
- 8.2 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 Laws and regulations, policies and procedures have been implemented to help ensure the Council's objectives are achieved in a manner that promotes economic, efficient and effective use of public resources and that assets and interests are safeguarded. The controls these put in place are designed to provide reasonable assurance rather than absolute certainty, because systems are susceptible to human error and poor judgement, and controls can be deliberately circumvented or overridden.
- 9.2 An important way for the Council to assess the efficacy of, and provide assurance on, its risk management, internal control and governance arrangements is to monitor and identify adverse incidents that it has had to deal with, and provide public assurance that appropriate action has been

taken to ensure that any shortcomings are rectified promptly, and are less likely to be repeated in future. Often, it is sufficient to draw attention to the proper requirements and the likelihood of sanctions for non-compliance with them, supported by guidance and, where necessary, training.

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. This included the use of a new Non-Compliance Form as a means of reporting those situations where an existing non-compliance was discovered. All forms are signed off by Legal, Procurement and Finance Officers, as well as the decision taking Officer along with the relevant Head of Service and Portfolio Holder. Formal sign off for both by the Corporate Management Team (CMT) at its weekly meeting was required.
- 10.2 There have since been two changes to the process, in January 2013 and in May 2013. In January 2013, a separate reporting form was introduced to record those cases where at least three quotes/tenders were not received although they had been requested. In May 2013, Delegated Decisions and Non-Compliance Forms were no longer routinely presented for approval at CMT.

Internal Audit Review

- 10.3 An internal audit review of the operation and use of Delegated Decisions and Non-Compliances was undertaken and a draft report issued in July 2013. This has been discussed with the Chief Operating Officer and Monitoring Officer and a number of management actions identified.
- 10.4 The general findings from the internal audit review were that over the period of the review May 2012 to April 2013:
- The process in place has been in excess of that specified in Finance & Contract Procedure Rules.
 - Each Delegated Decision makes use of already specified exceptions, and requires input from a minimum of seven senior staff and one Member, and on average take one month to fully process.
 - There is no formal definition of “at risk” (Finance & Contract Procedure Rules).
 - It is not clear if the “at risk” requirement applies equally to Non-Compliances which may carry greater risk.
 - The full value of contracts may not be declared, hampered by a lack of original documentation in some cases.

A particular issue to note in relation to Delegated Decisions was the relatively low value of many of the Decisions. In fact 60% (twenty seven of the forty four during the period reviewed in the audit) were for values less than £75,000, the point below which the Council does not require formal tenders to be obtained. The significant issue for Non-Compliances related to the fact that a number of cases related to arrangements that had been running for several years, some pre-LGR in fact, where the full value may well exceed the relevant EU limit.

10.5 The key action from the draft audit report is for senior management, in conjunction with Members, to review the current arrangements and to determine what, if any, changes are necessary to ensure that the process is fit for purpose in terms of:

- Complying with the relevant laws and regulations;
- Providing timely and cost effective decision making;
- Robustly assessing risk;
- Providing for documented and transparent decision making, and addressing non-compliant practice.

10.6 The report has been discussed with senior managers and improvement actions agreed include:

- Changes to the process introduced in January 2013 and May 2013 to reduce the bureaucratic element of the process.
- Review of Constitution as a whole including the Finance & Contract Procedure Rules relating to seeking waivers to their application.
- Seeking additional support and expertise where appropriate e.g. engagement of V4 consultancy to support Corporate Procurement Unit.
- Development of standard contract documentation by Legal Services for up to £75,000 contracts.
- Formation of a review board (or similar) to receive reports on and to review practices and their application including the use of waivers on a regular basis.
- Audit and Governance Committee to continue receiving reports on compliance with procedures, use of exceptions, lessons learned and actions taken as specified in Finance & Contract Procedure Rules.

Delegated Decisions

10.7 An analysis of the reasons for Delegated Decisions raised since the report to Committee in September 2012 until the end of August 2013 has been carried out. This showed that forty nine Delegated Decisions have been logged; forty seven of which were approved and two rejected. The main reasons for requesting Delegated Decisions were:

- Issues of urgency or efficiency of the service, generally on the basis that undertaking a full procurement process would add delay and /or costs.
- Less than three quotes obtained - these cases are now no longer dealt with via Delegated Decisions.
- Where the service consider it in the best interest of the client.
- Where there is a sole supplier or the requirement is for compatibility with an existing system or equipment.

An analysis of Delegated Decisions by Directorates under the previous management structure, which was in place for the majority of the period under review, shows:

Directorate	Number	Percentage
Children, Families & Adults	18	37%
Corporate	12	24%
Places & Organisational Capacity	19	39%
Total	49	100%

Non-Compliances

- 10.8 A similar analysis for Non-Compliance Forms showed twenty three for the same period with two rejected and one deferred. The main purpose of the Non-Compliance Form is to formally declare those situations where an instance of non-compliance is recognised or discovered after the procurement. As such these cases can be more complicated and several have been for arrangements that have been in place for a number of years.

With instances of non-compliance, there can be several aspects to consider. The most common reason has been that a non-competitive award has been recognised; there may be a lack of original contract or tender documentation available and an interim continuation is required to provide time for a compliant procurement process to be undertaken.

The main reasons for raising Non-Compliance Forms were:

- Notifying a previous non-competitive award requiring a period to re-procure; of which some did not have a formal contract document;
- Notifying a previous non-competitive award with no ongoing requirement;
- Notifying the lack of a formal contract document.

An analysis of Non-Compliance Forms by Directorates under the previous management structure, which was in place for the majority of the period under review, shows:

Directorate	Number	Percentage
Children, Families & Adults	8	35%
Corporate	4	17%
Places & Organisational Capacity	11	48%
Total	23	100%

11.0 Access to information

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

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