

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting:	19 th November 2014
Report of:	Dominic Oakeshott Corporate Manager Professional and Commercial Services
Subject/Title:	Revisions to the Contract Procedure Rules

1.0 Report Summary

- 1.1. This report requests Member's consideration of a newly drafted section of the Constitution which sets out the Council's Contract Procedure Rules (CPR's) which govern how the Council procures goods, works and services from third parties. The CPR's sit alongside the Council's Financial Procedure Rules (FPR's), a review of which will be subject to further consideration and changes as part of the development of financial reporting during the early part of 2015. However there will be some minor consequential changes to the FPR's, authority for which is sought at paragraphs 2.1 and 10.6 below, before a fuller revision later in 2015.
- 1.2. The amendments are required to comply with changes to European Union (EU) and domestic procurement legislation and to introduce lean simplified processes following the Council's decision to become a Strategic Commissioning Council, and the creation of Alternative Service Delivery Vehicles for the provision of Council services. The revisions will allow the Council to adopt a more mature attitude to managing commercial risk and simplify the procurement process, particularly below the EU value thresholds, allowing better engagement with small and medium enterprises (SME's) and local businesses, whilst still maintaining a robust governance framework to ensure Council monies are spent in a legally compliant, ethical, responsible, and fully auditable manner.

2.0 Recommendation

- 2.1 To recommend that the Constitution Committee:
 1. Recommend that Council approve the revisions to the CPR's for adoption from 1st January 2015 to allow a phased introduction of change in line with point 4 below;
 2. Recommend the Council authorise that the Constitution be updated accordingly by the inclusion of the revised CPR's;
 3. Recommend the Council authorise that any consequential drafting amendments to the remaining parts of the Council's Constitution, including

the FPR's, be undertaken by the Head of Legal Services and Monitoring Officer to ensure consistency with the revised CPR's;

4. Recommend the Council approve an incremental reduction in value thresholds to enable phased introduction of procurement involvement down to £10K from the current £75K to allow a smooth transition from existing arrangements.

3.0 Reasons for Recommendations

- 3.1 To take account of current and proposed changes to EU and domestic legislation and ensure the Council's procurement processes are legally compliant and follow recognised best practice.
- 3.2 In order to simplify and improve procurement practice both for the Council and suppliers seeking to secure Council business, with the aim of making it easier for our potential suppliers to engage with the Council, particularly for SME's and local suppliers.
- 3.3 To ensure that the Council's procurement practice fully supports its position as a Strategic Commissioning Council, legal and commercial risks are mitigated and properly managed and the Council achieves maximum value through a fully commercial approach to procurement.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 The CPR's set out the framework within which all Council officers have to operate to procure goods, works and services on the Council's behalf. The rules are explicit in setting out pre procurement authorisation routes in line with Council authorisation policy, the Financial Procedure Rules, and associated local Schemes of Delegation.

7.0 Financial Implications

- 7.1 The revision of the CPRs will allow the Council to help continue to drive improved value for money from its procurement activity, which is an important part of the assessment of the Council's performance by our Auditors, Grant Thornton.
- 7.2 The revision of processes, along with the assessment of risk within the process, will allow the procurement function to focus the effort on those activities that will have the biggest impact for the Council.

8.0 Legal Implications

- 8.1 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.
- 8.2 The preparation of the new Contract Procedure Rules was undertaken under the authority of the Corporate Leadership Board with full Legal and Audit consultation. The revised CPR's are agreed by the Head of Legal Services and Monitoring Officer. The CPR's provide a robust governance framework for procurement which reduces legal, financial and compliance risk.
- 8.3 In accordance with the Council's current Constitution any changes to the Constitution are required to be agreed by full Council following recommendation from the Constitution Committee.

9.0 Risk Management

- 9.1 Legal and financial implications are recorded above.
- 9.2 Reviewing the CPR's to reflect legislative change and established best practice provides the necessary clarity to Council Officers concerned with procuring goods, works, and services to ensure that processes followed are legally and financially compliant.
- 9.3 The revised CPR's introduce and support a Risk Based Sourcing (RBS) model for all procurement above £10K up to the appropriate EU value thresholds, ensuring that procurement risk is properly assessed prior to procuring goods, works and services, and that the process followed and resultant contractual arrangements are proportionate to the level of assessed risk.

10.0 Background and Options

- 10.1 This report is brought to the Committee as the CPR's need revision due to impending legislative changes and changes to established best practice and revised government guidance on future procurement practice.
- 10.2 The starting point has been the current Council Constitution as most recently revised when it was considered by this Committee at its 9 October 2013 meeting.
- 10.3 In addition the Council is seeking to achieve the following:

- To improve compliance, simplify process and improve governance, reducing risk to the Council
- To support a more commercial approach ensuring best value, with a balanced attitude to risk
- To introduce simplified lean processes, particularly below £EU thresholds, which support the delivery of savings and cost avoidance, whilst making it easier for local/SME's/all companies to bid for Council business
- Facilitate Corporate Procurement (CPU) involvement in all procurement activity above an agreed threshold, which is currently £10K– allowing a whole Council view and better supporting commissioners and services across the organisation
- Increase the Council's current Key Decision threshold from the current £500k to £1M to reduce the number of lower level procurements caught by the key decision process (subject to the safeguards outlined below)

10.4 As part of the process of simplifying the CPR's material which constituted guidance particularly on the various EU tender procedures has been removed from the CPR's and will be available to officers via the Council's intranet. This has the advantage of removing superfluous material from the 'rules' and providing a degree of 'future proofing' to the Constitution as guidance can be regularly updated to reflect procedural changes and case law without a consequential need to amend the Constitution.

10.5 The table below sets out the key changes to the CPR's:

Key Areas for Change

No	Proposed Area of Change	Commentary/Benefit of Change
1	Amend Key Decision threshold from current £500k to £1M	Current threshold is low in comparison to many other Councils and key decision status currently adds significantly to procedural timeframes for procurement greater than £500K value. Streamlined processes for sub £1M tenders can be introduced whilst maintaining adequate safeguards via other existing channels eg. TEG/EMB/CLB. It is also intended to introduce additional budget verification procedures as part of the pre-procurement risk assessment procedure for all procurement activity, maintaining safeguards whilst reducing the number of projects captured by the key decision process.
2	Amend verification (tender opening) process Currently above £75K value all tenders are verified by Legal. Amend	Stream-lines access to tender returns saving considerable time in the process. Current rules are a throwback from the days of sealed paper tenders. Current threshold is very low. All bid/tender activity above £10K will be via e-procurement (mandated in both new domestic and EU legislation) and the Council is fully protected by a comprehensive electronic audit

	to: £1M+ Head of Legal (or Delegate), £EU-£1M Procurement Category Manager below £EU – Procurement Officer	trail which is tamper-proof.
3	Amend below EU threshold and processes From >£75k – formal tender process to £10k to EU threshold – Risk Based Sourcing (RBS)	All procurement above £10k will be carried out by the procurement team in future. (Caveat: Incrementally – via Procurement Improvement Programme). Supports compliance, drives savings and commercial agility, procurement process is simplified, flexible and proportionate to risk, removes PQQ below £EU (mandated in new domestic legislation) and makes it simpler for business to bid for Council work – particularly SME’s – provides additional support to the ‘local’ agenda.
4	Increase threshold for sealing contracts: from £50k to £1M (*except where good commercial reasons exist)	CE threshold for sealing is low in comparison to other Councils and process adds significant delay and bureaucracy in getting contracts in place – flexibility to seal below £1M is still retained where legal/procurement feel justified eg. Construction contracts. This will harness leaner processes where appropriate
5	Increase threshold for where ‘back of the order’ T&C’s can be used	Currently everything over £10K requires a bespoke contract even ‘run of the mill’ procurements of goods which are delivered with standard warranties. Back of order standard T&C’s should be utilised (subject to risk assessment) to reduce complexity/ bureaucracy of straightforward purchases. PO is a contract -essential to realise the advantages of RBS for lower level procurement.
6	Introduce the use of standard contracts for straightforward services etc.	CE currently drafts bespoke contracts for everything. Other LA’s and consortia make use of standard contracts for services, ICT etc. with appendices for completion by procurement with legal agreement. Leaner process reduces procurement timeframes and complexity supporting RBS principles. Legal and Procurement will determine and agree the list and content of the standard contracts.
7	Waivers: To review the list of circumstances where exceptions/waivers can be requested and to change the form/process for gaining waiver approval.	Reduce the number of waivers submitted/approved and increase compliance/reduce risk. Simplify the process giving the Procurement Manager (who is best placed to consider procurement related solutions) and the Procurement Board a greater role in the process. Reduce the number of decision makers in the process to increase accountability.
8	Contract Extensions: Proposal is to bolster the wording and to put in restrictions e.g. extensions may only be taken up after consultation with Procurement Manager.	Appropriate value engineering provision to be included in renewal wording in all contracts to allow proper contract management and a reasoned informed risk/performance based approach to contract extension, this change will enhance compliance, visibility and control around re-tendering and support improved value for money and commercial contract management.
9	Introduce Best and Final Offer (BAFO) below £EU thresholds (note potential	Option to use BAFO in appropriate procurements allows increased level of savings – best commercial terms when placing Council business.

	exists to exploit this in certain OJEU procedures as well)	
10	E-procurement: Mandate the use of e-procurement system for all procurement over £10K.	Now mandated in EU and domestic legislation from early 2015. Provides robust audit trail and ensures contracts are properly recorded on the contracts register – drives compliance and reduces risk, simplifies audit activity. Also reaches the widest range of suppliers and reduces risk to the Council by ensuring transparency and visibility.
11	Corporate Contracts	Insert paragraph on using corporate contracts where they are in place. Guide departments to use of existing corporate contracts to increase compliance, savings in using current suppliers, not adding new suppliers to the system and paying higher prices for similar items. Reduce unnecessary procurement activity.
12	General Issues	CPR's currently include detailed process descriptions for all EU tender processes. CPR's are the Council 'rule book' and compliance framework for procurement and processes can be subject to change over time potentially requiring 'in year' constitutional change. The proposal is to remove these items and place them in the 'procurement knowledge map' with links to the map in CPR's. – this will allow all officers access to the latest procedural information and guidance which can be constantly updated without the need to make changes to the constitution

10.6 Members should be reassured that whilst the amended CPR's are simplified they provide a robust compliance framework. The amendments provide fully for appropriate financial safeguards before the commencement of any procurement activity. The amended CPR's introduce a budget verification process before commencing activity, ensuring that the required pre-procurement authorisations are obtained in line with the appropriate scheme of delegation at the lower level, or via the Technical Enablement Group/Executive Monitoring Board (both of which have Member representation) for projects involving significant change or of a value exceeding £250k thereby capturing all procurement below the proposed key decision threshold of £1M. Other than the threshold, the Key Decision process is unchanged; ensuring that procurement at all levels is subject to an effective control process.

10.7 The changes that are agreed by this Committee will then go to full Council for its approval, in accordance with the Constitution; this may require further minor work to be completed elsewhere in the Constitution to ensure consistency.

10.8 Members will note that as is usual when there is a Constitutional change, delegated authority is sought for the Head of Legal Services and Monitoring Officer to make any minor drafting amendments elsewhere in the Constitution

that arise as a result of the revised CPR's coming into operation. This will include the consequential changes to the FPRs.

11.0 Access to Information

- 11.1 The Council's current Constitution is available for viewing on the Council's website: www.cheshireeast.gov.uk

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

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