



Leicester
City Council

WARDS AFFECTED
All

Council

22 January 2015

REVISION TO THE CONSTITUTION

Joint report of the Monitoring Officer and Director of Finance

1. PURPOSE OF REPORT

- 1.1 To agree revisions to the Council's Constitution
- 1.2 Article 16 of the Constitution imposes a duty to monitor and review of the operation of the Constitution. This report proposes suggested amendments reflecting the on-going work to meet this duty and further suggests amendments arising from changes to Government Regulations.

2. RECOMMENDATIONS (OR OPTIONS)

- 2.1. To agree the new Contract Procedures Rules (CPR) and Finance Procedure Rules (FPR) appended to this report (to take effect from 1 March 2015) and transitional arrangements set out in the Appendix.
- 2.2. To agree a revision to Article 6 (Part 2, Key Decisions) as per paragraph 4.7 below

3. SUMMARY

Contract Procedure Rules

- 3.1. The CPR are a legal requirement for the Council and set out the rules and processes which must be followed when entering into contracts for the purchase/hire of goods, disposal of assets and purchase of works and services.
- 3.2. Over the past year, a number of changes to council policy, procurement legislation and the Council's procurement structure have taken place which mean the rules need to be updated. Additionally a general need to update the CPR to address issues and improve procurement processes has been identified.
- 3.3. New CPR have been drafted with consultation with senior management and relevant service areas across the Council, including Finance, Legal and Internal Audit. These

are attached as Appendix 1. A draft was presented to Audit & Risk Committee in September 2014.

- 3.4. As part of this process it was identified that there was some cross-over between the CPR and FPR and therefore changes to the section 3 of the FPR would be needed to ensure there was no contradiction between the two sets of Rules. It is also proposed to amend the rule which effectively prevents payment in advance to contractors, as this is often justified, particularly when working with SMEs and VCOs. These proposed changes are set out at Appendix 2.

Key Decisions

- 3.5. The current definition of Key Decisions fails to distinguish between Decisions that require the exercise of judgement on the part of a decision-maker within the Council and those where the Council's role in "deciding them" is confined to agreeing to release monies. Specifically, the City acts as "accountable body" for the disbursement of Regional monies on schemes which are approved in substance by another decision-maker (such as the LLEP). In such cases the Council exercises no judgement whatsoever. In those circumstances the rigorous procedural requirements around Key Decisions ought to be dis-applied. See paragraphs 4.4 to 4.9 for further explanation.

4. Report

Contract Procedure Rules

- 4.1. The key changes from the current rules:
- Requirement to source low value contracts locally where possible and ensure quotes are sought from local companies where the opportunity is not advertised
 - Change in processes to reflect the existing 'PAN' process ("Advertised Quotation");
 - Thresholds changed so current £2.5k threshold is changed to £10k; giving greater flexibility of process compared to current policy for contracts between £1k and £10k, whilst maintaining the recent strategy of advertising these contracts wherever possible;
 - The current requirement to follow a full tender procedure for contracts over £30k is lifted to £75k to make procurement easier, and allow greater flexibility in how procurement processes are customised to the supply market to ensure they are accessible for local SMEs and VCOs;
 - New higher thresholds for works contracts to align with the higher EU thresholds for works;
 - Removal of the network of Approved Procuring Officers which is replaced by reference to Specialist Procurement Teams and the new Procuring Officer, who will in most cases be somebody within one of those teams, as is already current policy;
 - To reflect this centralisation, a lot more of the approvals are required from the Head of Procurement/City Barrister rather than Divisional Directors; however a procurement process cannot start or be awarded without the approval of the service area;
 - Updated to reflect new legislation and remove some of the inconsistencies;
 - Greater flexibility in relation to clarifying/negotiating with bidders to encourage a more commercial approach;

- Rules focus on what must be done with guidance to be developed on what should be done; and
- Addition of Appendix 2 to allow the rules to be applied to schools more practically.

4.2. It is proposed that these new rules will come into force on 1st March 2015.

4.3. However, the new Public Contract Regulations 2015 are still to be passed by parliament, and are unlikely to be effective on 1st March 2015. The new CPR have been drafted based on the new legislation and until this comes into effect, there may be some inconsistencies in cross-referencing and procedural detail between the outgoing legislation and the new CPR. This is recognised and will be dealt with through the supervision of the City Barrister and Head of Procurement. Other inconsistencies can easily be dealt with through the approval processes established by the new rules.

Key Decisions

4.4. The current wording of Article 6 states that a matter will be regarded as a Key Decision where:

“In the case of one off or capital expenditure, spending of over £1m is to be committed on a scheme which has not been specifically authorized by Council”

4.5. Key Decisions are subject to a rigorous reporting regime which includes mapping them onto the appropriate Plan of Key Decisions at least 28 days before a decision is required, publication of notice of intention to make a Key Decision, and publication of reports five days in advance of the actual Decision. They are also subject to challenge on grounds that are broader in scope than those which apply to other Decisions.

4.6. However, where the Council acts as “Accountable Body” for certain schemes, it undertakes decision-making which often entails no financial impact for the Council and where it exercises no substantive decision-making role over the merits of a bid/scheme. Its role is merely to distribute monies provided by another body for schemes sanctioned by another body. It is these schemes which the proposed amendment aims to capture by altering the definition as follows:

“In the case of one off or capital expenditure, spending of over £1m is to be committed on a scheme except where:

(i) The scheme has been specifically approved by Council; or

(ii) The scheme is not a city council sponsored scheme, and constitutes city council expenditure solely by virtue of the council receiving and disbursing external grant (including accountable body arrangements).”

4.7. The only legal definition for Key Decisions comes from the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which states:

Regulation 8: Key decisions

(1) In these Regulations a “key decision” means an executive decision, which is likely—

(a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates; or

(b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.

4.8. It is submitted that accordingly the focus of the intention of Parliament was to capture as Key Decisions those decisions where the Council is exercising substantive decision-making authority, and that the amendment to Article 6 is justified as saving unnecessary expenditure of Council time and resources.

4.9. All Executive Decisions (Key or Non-Key) remain subject to the power of call-in, and the proposed amendment does not alter this.

5. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1. Financial Implications

There are no significant direct financial implications from changing these rules. It is anticipated that the resource required to conduct the processes set out is already in place in the council's procurement teams. The rules are aimed at ensuring procurement activity derives best value and maximum economic benefit for Leicester. – Colin Sharpe, Head of Finance, ext. 37 4081

5.2. Legal Implications

Legal Services have been consulted in drafting the new Rules and have advised. The relevant applicable law derives from the Treaty on the Functioning of the European Union. The current law is in the Public Contracts Regulations 2006 (as amended) (the 2006 Regulations). This is being amended in line with new European legislation and will be contained in regulations which we are told, will be in force during the first half of 2015. The new regulations will be known as the Public Contracts Regulations 2015 (the 2015 Regulations).

As noted in the report, the Council should ensure that it applies the 2006 Regulations until the 2015 Regulations come into effect.

The legal implications of the proposed changes to Article 6 are dealt with at paragraphs 4.7 to 4.9 above.

Other Implications

OTHER IMPLICATIONS	YES/ NO	Paragraph/References within the Report
Equal Opportunities	Yes	Procurement has the potential to impact on all of these implications, and the
Policy	Yes	

Sustainable and Environmental	Yes	guidance which is being developed to accompany these Rules will detail how this should be done. The centralisation of procurement activity to a fewer number of professionals will help ensure this is done in a consistent and proportionate manner.
Crime and Disorder	Yes	
Human Rights Act	Yes	
Elderly/People on Low Income	Yes	
Corporate Parenting	Yes	
Health Inequalities Impact	Yes	
Risk Management	Yes	Risk Management and Internal Audit have been consulted when developing these new procedures which have been drafted to provide appropriate controls to risks that occur during all procurement processes. The Rules sit alongside the Council's Risk Management Strategy and Policy.

6. Consultations

6.1. See paragraph 3.3 above.

7. Report Authors

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