

Report for: Full Council on 22nd February 2016

Item number: 9

Title: Amendments to the Constitution under the Monitoring Officer Delegated Authority

Report authorised by: Bernie Ryan, Monitoring Officer and Assistant Director, Corporate Governance

Lead Officer: Stephen Lawrence-Orumwense, Assistant Head of Legal Services, Social Care and Contracts

Ward(s) affected: All

**Report for Key/
Non Key Decision:** N/A

1. Describe the issue under consideration

- 1.1 Under Article 14.03 of the Constitution, the Monitoring Officer has delegated authority to make required changes to the Constitution as a result of legislative changes.
- 1.2 The purpose of this report is to inform Full Council of the changes to the Contract Procedure Rules in Part 4 Section J of the Constitution following the enactment of the new Public Contracts Regulations 2015.

2. Cabinet Member Introduction

- 2.1 N/A

3. Recommendations

- 3.1 To note the changes to Part 4 Section J Contract Procedure Rules in the Constitution and which is attached as Appendix 1. The changes are shown as tracked changes to the current contract standing orders.

4. Reasons for decision

- 4.1 In 2015, the legislation which governs the procurement rules for public sector procurement was updated and enacted into UK legislation in the form of the Public Contracts Regulations 2015. This legislation replaces the Public Contracts Regulations 2006 (as Amended). The Council, as a public sector organisation is

bound by this legislation and therefore, the internal Contract Procedure Rules of the Council need to be updated accordingly.

5. Alternative options considered

- 5.1 The Council must amend its Contract Procedure Rules in the Constitution to ensure it is in line with the legislation. The do nothing option is not applicable.

6. Background information

- 6.1 The European Union amended its procurement Directives (Directive 2014/24/EU, Directive 2014/23/EU and Directive 2014/25/EU) in 2014. The Directives came into force at EU level on 17 April 2014. The UK Government declared that it would be an early adopter of the new Directives. Directive 2014/24/EU (Public Sector) was enshrined into UK law in 2015, in the form of the Public Contracts Regulations 2015.
- 6.2 As a consequence of the change to the legislation, it is necessary to update the Council's internal Contracts Procedure Rules to ensure that officers, when referring to the rules, are getting up to date and accurate guidance.
- 6.3 There have been a number of changes introduced by the new Regulation. Some of the highlights, although not an exhaustive list, are set out below:
- a) The mandatory use of electronic communication for tenders (Regulations 22 & 53). This requires local authorities to make procurement documents electronically available without restriction. Regulation 53 requires all contracting authorities to offer full and unrestricted access to all the procurement documents from the date that a contract (OJEU) notice is published in the OJEU.
 - b) Introduction of a new procedure entitled Competitive Procedure with Negotiation (Regulation 29). This new procedure is an alternative to the Competitive Dialogue procedure and can be used where a contracting authority knows what it needs but requires negotiation with the market to develop a solution.
 - c) Introduction of a new procedure entitled Innovation Partnership (Regulation 31). This is a new procedure which is to be used primarily for research and development.
 - d) Abnormally low tenders - Regulation 69 requires contracting authorities to demand an explanation where a tender appears to abnormally low, and states that bids may only be rejected where this explanation is unsatisfactory.
 - e) Introduction of light touch regime (Regulations 74-76) to replace the distinction between Part A and Part B Services. Under the Public Contracts Regulations 2006, contracts for so-called Part B Services were exempt from the full

application of the rules (particularly, there was no requirement to advertise in the OJEU). Under the PCR 2015, the distinction between Part A and Part B Services has been removed and replaced by what is becoming known as the “Light Touch” regime. Details of this regime are at Regulation 74 to 76 of the PCR 2015. A services contract will fall within the scope of the Light Touch regime if it is for the certain types of health, social and other services listed at Schedule 3 of the PCR 2015. For these Light Touch regime contracts, a higher threshold than that for ordinary service contracts will apply, before the Light Touch regime is applicable. This threshold is set out at Article 4(d) of the Directive and at the time of writing is EUR 750,000. While the Light Touch regime is not prescriptive as to how contracting authorities design their procurement process for Light Touch regime services contracts, it does for the first time require that services contracts that fall within the Light Touch regime are advertised in the Official Journal of the European Union (OJEU).

- f) Reserved contracts for mutually-owned entities and sheltered workshops. The PCR 2015 contains new opportunities for contracting authorities to further social and community policies by reserving contract opportunities to certain types of supplier. Regulation 77 allows contracting authorities to reserve contracts for certain health, social and cultural services to employee mutuals without having to subject the contract to the application of the PCR 2015 in full. Detailed provisions are contained in Regulation 77 as to what organisations qualify.
- g) Publication of notices on Contracts Finder (Regulations 106 and 108). These provisions require that where a contracting authority advertises a contract opportunity above the relevant threshold (currently £25,000) it must also publish the opportunity on Contracts Finder. This puts onto a statutory footing the obligation to publish on Contracts Finder.

6.4 Some of these provisions are reflected in the revised Contract Procedure Rules attached as Appendix 1. The Contract Procedure Rules is not an exhaustive list of all the requirement of the Regulations. However, the revision made serves to ensure that the Council’s rules are in line with the Regulations.

7. Contribution to strategic outcomes

7.1 N/A

8. Statutory Officers comments (Chief Finance Officer, Procurement, Assistant Director of Corporate Governance, Equalities)

8.1. Finance

This report confirms revision to the Contract Procedure Rules as a result the Public Contracts Regulations 2015. There are no financial implications arising from the required revision of the contract rules.

8.2 Procurement

Procurement has been fully consulted in respect of the proposed amendments to the Contract Standing Orders and is supportive of this report and the recommendations contained herein.

8.3 Legal

The Assistant Director of Corporate Governance confirms the changes to the Contract Procedure Rules are required to ensure compliance with the Public Contracts Regulations 2015.

9. Use of Appendices

9.1 Appendix 1: Amended Contract Procedure Rules

10. Local Government (Access to Information) Act 1995