

Open Report on behalf of Richard Wills, Monitoring Officer

Report to:	County Council
Date:	18 September 2015
Subject:	Amendments to the Council's Constitution arising from Legislative Changes

Summary:

The purpose of this report is to ask the Council to approve the changes as detailed at Appendix A to this Report. These are necessary to ensure that the Council has workable arrangements for contract letting following a change in the law. The opportunity has been taken to tidy-up the presentation of the rules.

Recommendation(s):

That the Council

approves the amendments to the Council's Constitution detailed at Appendix A to this Report;

1. Background

1.1 In accordance with the Council's Constitution, the Monitoring Officer is responsible for reviewing the Constitution with a view to recommending amendments necessary to ensure that the Constitution is compliant with changes to legislation.

1.2 Amendments are necessary to the Council's contract regulations contained within the Constitution to ensure compliance with the Public Contracts Regulations 2015 ("the Regulations") which introduced a number of changes to procurement law to regulate procurements below the OJEU threshold (less than £172,514 for services). These changes require the Council to consider how it meets the new requirements and this paper proposes draft amendments to the Council's contract regulations which are compliant with the law. At the same time the opportunity has been taken to review the contract regulations;

- to re-designate what constitutes low, medium, medium high and high value procurements
- in the light of recent changes including the Council's changed structure following the creation of the Commercial Team

- to strip out material which better sits in the Council's Contract and Procurement Procedure Rules (CPPRs)(an operational document which does not form part of the Council's Constitution).

1.3 The proposed changes to the Council's current Contract regulations are set out in Appendix A. The changes are tracked for ease of reference.

2. Below EU Threshold Procurements

2.1 The new Regulations require the Council to advertise the procurement on the national procurement portal Contracts Finder **if** the procurement is advertised elsewhere. At the same time Councils are no longer able to run a prequalification stage to down select potential suppliers. This process has been used to reduce the evaluation burden if a significant response is expected for a procurement exercise.

2.2 Currently the Councils CPPRs require that any procurement above £25,000 must be advertised on Source Lincolnshire. This was designed to encourage local suppliers to bid for work and improve local economy engagement.

2.3 Under the new Regulations if the Council continues to advertise on Source Lincolnshire it must now also advertise on Contracts Finder which in effect neutralises the local engagement intentions and also advertises the opportunity nationally increasing the risk of a high volume of responses.

2.4 The council now has no method to manage large responses for low value procurements as it cannot short list to a predetermined number of bidders via a prequalification stage. This poses a significant risk with regards to resource, i.e. if 30 responses were received, all 30 responses must be evaluated.

2.5 At the same time EU Treaty principles of openness, transparency and equal treatment may themselves require advertisement of opportunities which are below the EU threshold.

2.6 To resolve the conflicts between these different developments, the Council's objectives to encourage local suppliers and to obtain value for money the following approach to the Contract Regulations is proposed

- (a) Contracts between £5000 and £15,000 would normally be tested by obtaining 3 quotations (currently there is no requirement to obtain quotations below £10,000).
- (b) Where Treaty principles permit, Contracts from £15,000 to the EU threshold for services (£172,514) will unless a Director determines otherwise be awarded without advertisement. In these circumstances formal quotations will be required from at least 4 companies, including at least 2 local companies where possible, (currently there is a requirement to tender above £75,000).
- (c) Contracts above the EU threshold will be carried out in accordance with procurement regulations and EU Treaty principles.

2.7 This approach would enable the Council to comply with its legal obligations while minimising the impact of the prohibition on using a prequalification stage to down select and continuing to support local businesses where possible.

3. Other Proposed Changes

3.1 Paragraph 2.5 of the existing Contract Regulations in the case of works contracts say that where Council funding is estimated to exceed £100,000 the requirements relating to briefs and appraisals set out in Financial Regulations B9 should be followed. In fact the £100,000 is a typographical error out of step with Financial Regulations B9 and should read £500,000 and the opportunity to correct this has been taken.

3.2 The creation of the Commercial team is referenced at appropriate points throughout the amended Contract Regulations.

3.3 The material sitting in the existing contract regulations at paragraphs 3.4-3.7 deal with matters which are operational in nature. They better sit in the Council's CPPRs which sit below and which are consistent with the Contract Regulations. The CPPRs are being reviewed and developed by the Commercial Team in the light of the new regulations and best practice. This will enable changes to be made to the CPPRs as necessary without the need to change the Council's Constitution.

3.4 Sections 5.3 and 5.4 on charging and trading have been amended to remove the specific references to statutory provisions which have changed without affecting the basic power. This change will prevent the need to amend the Constitution each time the specific basis of these powers is amended.

3.5 It is not proposed that thresholds for exceptions decision-making on setting aside Contract Regulations should change and this is reflected in Appendix A.

4. Conclusion

4.1 Amendments to the Council's Constitution are the responsibility of Full Council. Councillors are therefore asked to consider the recommended amendments appended to the report.

3. Legal Comments:

The changes to the Constitution are required to bring the Constitution into line with changes in the law. The issues are rehearsed within the Report.

Changes to the Council's Constitution are a matter reserved for the full Council.

4. Resource Comments:

There should be no additional costs arising from the proposed changes and the new processes can be met from existing budgets.

The revised processes should ensure that the Council continues to derive value for money from its procurement activity.

5. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

Yes

c) Scrutiny Comments

n/a

d) Policy Proofing Actions Required

n/a

6. Appendices

These are listed below and attached at the back of the report

Appendix A	Changes to Part 4 – Rules of Procedure
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7. Background Papers

The following background papers as defined in the Local Government Act 1972 were relied upon in the writing of this report.

Document title	Where the document can be viewed
Public Contracts Regulations 2015	The Commercial Team

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