
Changes to the Constitution - Part 11 (Contract Rules of Procedure)

Committee considering report:	Council on 15 September 2016
Lead Member:	Chairman of Governance and Ethics Committee
Date Lead Member agreed report:	5 September 2016
Report Author:	David Holling
Forward Plan Ref:	C3134

1 Purpose of the Report

- 1.1 To review and if appropriate amend Part 11 (Contract Rules of Procedure) following a request from the Procurement Board to do so.

2 Recommendations

- 2.1 To consider and agree, if appropriate, the proposed amendments to Part 11 (Contract Rules of Procedure) and to discuss any additional changes required.
- 2.2 To agree that any changes will come into effect on the 16th September 2016.

3 Implications

- 3.1 **Financial:** S151 Officer at the Finance, Audit & Governance Group approved the amendments to Part 11 of the Constitution
There will be no costs associated with making the amendments to the Constitution
- 3.2 **Policy:** Will require changes to Part 11 of the Constitution
- 3.3 **Personnel:** None
- 3.4 **Legal:** None
- 3.5 **Risk Management:** None
- 3.6 **Property:** None
- 3.7 **Other:** None

4 Other options considered

- 4.1 Not to agree the changes

5 Executive Summary

- 5.1 Following an internal audit of the management of the Constitution in 2010 it was noted that one of the responsibilities of the Finance and Governance Group is to have ownership of the Council's Constitution. The content of the Local Code of Corporate Governance says that there will be an annual review of the operation of the Constitution. A timetable has been established for the Finance and Governance Group to review individual sections of the Constitution and this work is ongoing.

Part 11 Contract Rules of Procedure

- 5.2 A number of changes were made to Part 11 of the Council's Constitution (Contract Rules of Procedure) in May 2015 to ensure that the Council was acting in accordance with the Public Contracts Regulations 2015. The changes included the setting of thresholds delegating decision making as follows:

Total Contract Value £	Delegated decision or Resolution of:
Up to £99,999	Relevant Head of Service (or such officers as nominated by the Head of Service in writing) shall have delegated authority to award the contract.
£100,000 to £499,999	Relevant Head of Service following recommendation of S151 officer and Head of Legal Services shall submit a report to Corporate Board seeking delegated authority to award the contract in consultation with the S151 officer and Head of Legal Services.
Over £500,000	These contracts shall require a key decision of the Executive following recommendation by S151 officer and Head of Legal Services. Executive shall receive a report from the relevant officer either recommending for the contract to be awarded or seeking delegated authority for the relevant Head of Service to award the contract in consultation with the relevant Portfolio Holder, s151 officer and the Head of Legal Services.

- 5.3 The revised rules have been in place since May 2015 and Officers have now been asked to amend the thresholds by both Corporate Board and Procurement Board to reduce the number of contracts that require Executive approval. Under paragraph 11.4.4 transactions falling outside of the Capital Programme (e.g. revenue) and where the relevant Head of Service does not have the delegated authority to award the contract an approval or a resolution of the Executive is required.
- 5.4 The changes proposed affect mainly contracts over the £500,000, threshold; however some minor changes to the other thresholds are required to address clarity. The proposed table of amendments is set out below: -

Total Contract Value £	Delegated decision or Resolution of:
Up to £100,000.	Relevant Head of Service (or such officers as nominated by the Head of Service in writing) shall

Total Contract Value £	Delegated decision or Resolution of:
	have delegated authority to award the contract.
More than £100,000 and less than £500,000.	<p>Relevant Head of Service (following recommendation of the S151 officer and Head of Legal Services) shall have delegated authority to award the contract provided:</p> <p>a) a written report by the relevant Head of Service (or such officers as nominated by the Head of Service in writing) has been provided and approved by the Procurement Board; and</p> <p>b) the report has been included as an “item for information” item for the Corporate Board.</p>
More than £500,000 in total value and less than £2.5million per annum.	<p>The award of these contracts shall require a “key decision”(as defined in Part 5.1.1 of the Constitution) delegated to be taken by relevant Head of Service in consultation with the relevant Portfolio Holder (following recommendation by the relevant Corporate Director, S151 officer and Head of Legal Services) to award the contract provided:</p> <p>a) a written report by the relevant Head of Service (or such officers as nominated by the Head of Service in writing) has been provided and approved by the Procurement Board; and</p> <p>b) the report has been included as an “Item for information” item for the Corporate Board and to the Operations Board.</p> <p>c) such decision has been made in accordance with Part 5.3 and 5.4 of the Constitution.</p>
More than £2.5million per annum.	<p>These contracts shall require a key decision of the Executive following recommendation by S151 officer and Head of Legal Services. Executive shall receive a report from the relevant officer either recommending for the contract to be awarded or seeking delegated authority for the relevant Head of Service to award the contract in consultation with the relevant Portfolio Holder, s151 officer and the Head of Legal Services.</p>

5.5 Paragraph 11.11.11 (Exclusions and Exceptions to Contract Rules of Procedure) of the Constitution already identifies that the requirement to conduct a competitive procurement process is excluded in certain circumstances including:

- where the contract is excluded under the Procurement Legislation;
- where the proposed contract is being awarded under a Purchasing Scheme;
- where the proposed contract is an extension to or a variation of the scope of an existing contract where the existing contract provides for such extension or

a variation or where the variation is a modification permitted under the Procurement Legislation;

- where the contract is for specified social care services.

- 5.6 It should however be noted that all key decisions taken by the Council need to appear on the Council's Forward Plan. In accordance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 where a decision maker intends to make a key decision, that decision must not be made until at least 28 days public notice (Forward Plan) has been given that such a decision is to be made.
- 5.7 Under the Regulations a key decision is 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.
- 5.8 If Members are minded to approve the amended contract thresholds then it should be noted that decisions made by Officers under delegated authority will still have to appear on the Forward Plan within the prescribed deadlines and will also require the publication of a delegated officer decision notice which are then subject to the Council's call-in procedures.
- 5.9 A report was taken to the Council in December 2015. At that meeting Councillors raised some concerns around some of the thresholds. , they sought clearer definitions of what a "contract" was and what was meant by "valuation". Members also sought clarity on whether the value of the contract was to be the total value over the life of contract or if it was the annual figure.
- 5.10 Officers have therefore undertaken some further work on the Contract Rules of Procedure. The proposed changes to thresholds are largely in line with neighbouring authorities and it is therefore proposed that they be accepted. The description of contracts as set out in paragraph 11.1.3 has been extended to include Service Level Agreements and Software Licenses.
- 5.11 An additional paragraph 11.4.5 has been included setting out that 'The Total Contract Value is the whole of the estimated value (net of value added tax) which the Council expects to give under the contract calculated according to the valuation rules.' The contract values include an explanation as to whether it is the total value or a per annum figure.
- 5.12 An amendment has been included in the table at paragraph 11.11.1 stating that in respect of exemptions 'For contract value greater than £50,000, approval of the Procurement Board, following the submission of an extension report to the Procurement Board with recommendation from Head of Legal Services and S151 Officer.' A note clarifying this has also been included below the table.

6 Proposals

6.1 It is proposed that the revised thresholds as set out in paragraph 5.4 of this report be adopted.

7 Conclusion

7.1 This report recommends changes to Part 11 of the Council's constitution.

8 Appendices

Appendix A – West Berkshire Council Constitution – Part 11 Contract Rules of Procedure