

PLEASE NOTE TIME & VENUE

CONSTITUTION COMMITTEE AGENDA



Friday 28 March 2008

at 3.00pm

**in the Belle Vue Community, Sports and Youth
Centre, Kendal Road, Hartlepool**

MEMBERS: CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond

Councillors Brash, Fenwick, Flintoff, James, A Marshall, J Marshall, Morris, Preece, Richardson and Simmons.

1. APOLOGIES FOR ABSENCE

2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS

3. MINUTES

- 3.1 To confirm the minutes of the meeting of the Committee held on 25 January 2008.
- 3.2 To receive the minutes of the meeting of the Constitution Working Group held on 11 March 2008 *(to follow)*.

4. ITEMS REQUIRING DECISION

- 4.1 Proposed Amendments to Contract Procedure Rules – *Head of Procurement and Property Services*
- 4.2 Process Of Resident Representative's Election – *Chief Solicitor*

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- 4.3 Review And Approval Of Council Accounts And Audit Committee Membership
– *Chief Solicitor (to follow)*
- 4.4 Duration Of Planning Committee Meetings – *Chief Solicitor (to follow)*

5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

25 January 2008

The meeting commenced at 2.00 pm in the Avondale Centre,
Dyke House School, Hartlepool

Present:

Councillor: Councillor Carl Richardson (In the Chair)

Councillors: Jonathan Brash, Bob Flintoff, Marjorie James, Ann Marshall, Dr
George Morris and Chris Simmons.

In accordance with Council Procedure Rule 4.2 (ii) Councillor Rob Cook
attended as a substitute for Councillor Sandra Fenwick.

Officers: Tony Brown, Chief Solicitor
Angela Hunter, Principal Democratic Services Officer

29. Apologies for absence

Apologies for absence were received from The Mayor and Councillors
Sandra Fenwick and Arthur Preece.

30. Declarations of interest by Members

None.

31. Confirmation of the minutes of the following meetings:

- (i) Constitution Committee held on 30 November 2008 – confirmed.
- (ii) Constitution Working Group held on 11 January 2008 – confirmed.

32. Matters arising from the minutes

Constitution Committee – 30 November 2008 – Minute 28 – Any Other
Business – Members Access to Information Rights. Members were
informed that in respect of an outstanding complaint to the Standards Board
interviews had taken place with the Chief Solicitor and one other Member
and the outcome of the Ethical Standards Officer was awaited.

Constitution Working Group – 11 January 2008 – Minute 35 – Adjournment
of Committee Meetings. Members were informed that a Planning Working

Group had been arranged for 4 February 2008 to discuss this issue in detail in relation to Planning Committee and a report would be submitted to a future meeting of the Constitution Working Group with the recommendations of the Planning Committee.

33. **Executive Procedure Rules/Overview and Scrutiny Procedure Rules – Publication Date of Record of Decision** (*Chief Solicitor*)

At its meeting on 11 January 2008, Constitution Working Group had discussed the operation of arrangements for the publication of executive decision records. During the discussions, Members suggested that Saturdays were not to be used for the publication of decision records. In addition to this, it was suggested that the call-in period for executive decisions be extended to 4 working days to enable fuller consideration of the decisions taken.

The Chief Solicitor presented to Members the extracts from the Executive Procedure Rules and Overview and Scrutiny Rules and highlighted the amendments required to facilitate these changes. It was suggested that reference to the standing forum chairs and forum chairs in these documents be changed to refer to scrutiny forum chairs for clarity.

Decision

That the Executive Procedure Rules/Overview and Scrutiny Procedure Rules in the Constitution incorporating amendments highlighted in bold as follows:

(i) Overview and Scrutiny Procedure Rules - Extract

- 16 Category 1 - Call-in - where the principles of decision-making may not have been followed when taking the decision

The following sub-paragraphs set out category 1 call-in processes in detail. A summary can be found at Figure 1

(a) Mechanism for call-in

The following have the right to call-in:-

- (i) Each of the **scrutiny forum chairs**, provided that they have the support of at least two Members of the Scrutiny Co-ordinating Committee, and
- (ii) Five Members of the Council (excluding Members of the Executive)

and provided that the Members exercising the call-in represent at least two political groups.

When calling-in a decision the Members must identify the reasons for the call-in and the reasons why they believe the decision was not taken in accordance with the principles of decision-making set out in the constitution.

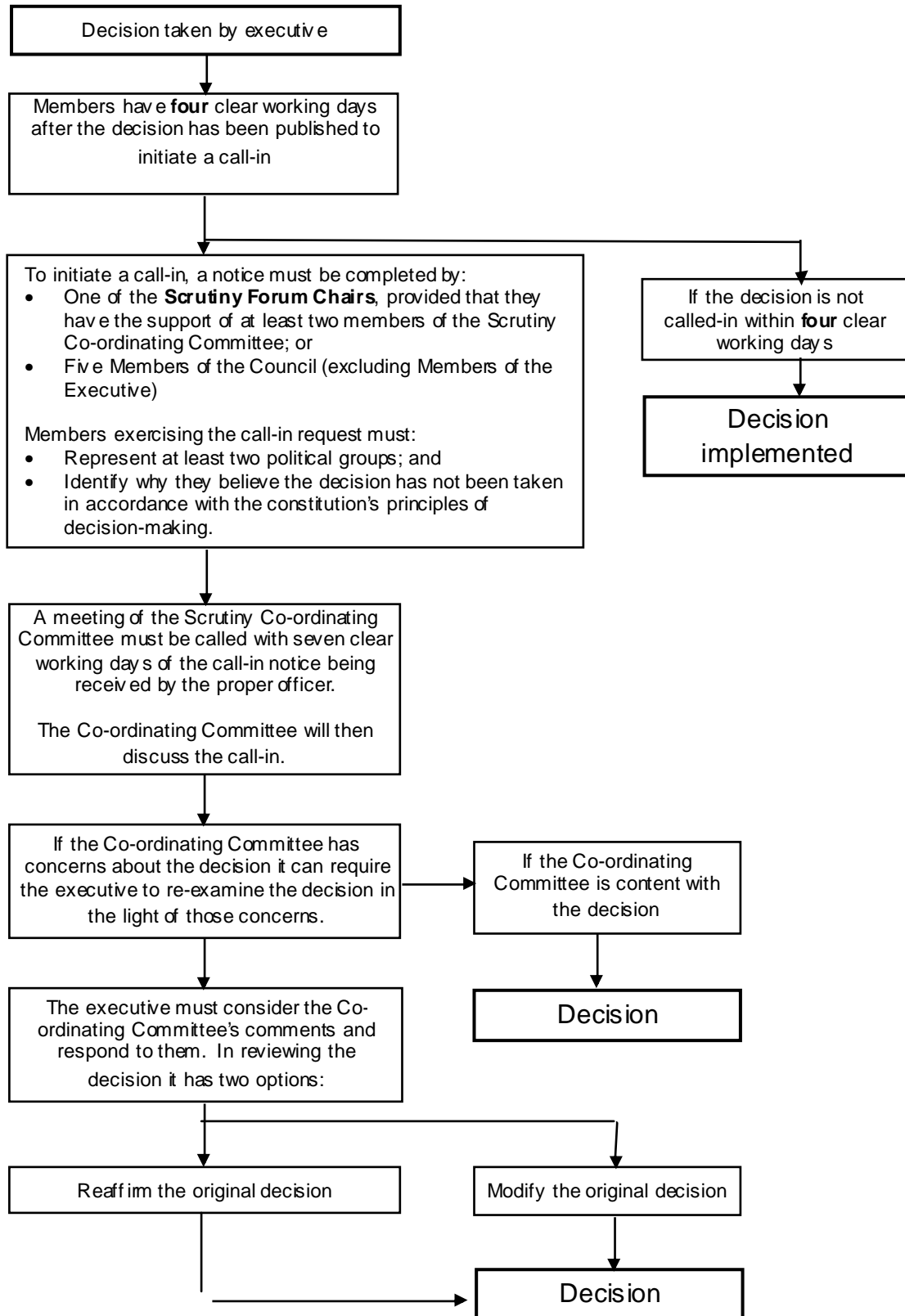
Notification of the wish to call-in a decision must be given to the proper officer not later than **4** clear working days after the publication of the decision. (After which the decision becomes effective i.e. on the **fifth** clear working day).

(b) Meeting to discuss call-in

The Co-ordinating Committee will meet not later than 7 working days after the call-in notification has been received by the proper officer, to consider the decision. If it fails to meet within the timescale then the decision becomes effective on its expiry (i.e. on the eighth day).

(ii) Overview and Scrutiny Procedure Rules - Extract

Figure 1 - Category 1 Call-in process - principles of decision-making may not have been followed
(Full details of this process are set out in Rule 16)



34. Adult and Community Services and Health Scrutiny Forum – Re-structure Proposal (*Chief Solicitor*)

At its meeting on 11 January 2008, Constitution Working Group had discussed the proposed restructure proposals for the Overview and Scrutiny Function pending the outcome of the budget setting process for 2008/09. It was noted that Members of the Scrutiny Co-ordinating Committee agreed to submit the financial implications to the Cabinet as a budget pressure for Scrutiny Support and thereafter to the Constitution Working Group/Committee (subject to approval).

As part of the proposed changes, it was suggested that the membership of Scrutiny Co-ordinating Committee remain at 16 and consist of:

Chair and Vice Chair of each of the five scrutiny forums;
One other Member from each of the five scrutiny forums;
The Chair to be chosen by Council with the Vice Chair to be one of the Chairs of the scrutiny forums.

The Chief Solicitor presented to Members the relevant extracts from Constitution and highlighted the amendments required to facilitate these changes.

Decision

The proposed amendments to the Constitution to provide for the restructure proposals for the Overview and Scrutiny Function for 2008/09 and as set out in the Chief Solicitors report and as indicated by Members of the Committee be recommended to Council for approval.

35. Any Other Business

It was suggested that the possibility of re-naming the Scrutiny Forums to Select Committees be considered. Members felt that the name Scrutiny Forums made it clear that the Forums' role was to scrutinise issues and that the names should not be changed.

CHAIRMAN

CONSTITUTION WORKING GROUP

11 March 2008

The meeting commenced at 5.00 pm in the Civic Centre, Hartlepool

Present:

Councillor Rob Cook (In the Chair)

Councillors Jonathan Brash, Bob Flintoff, George Morris, Arthur Preece and Chris Simmons

In accordance with Council Procedure Rule 4.2 (ii) Councillor Rob Cook was in attendance as substitute for Councillor Carl Richardson.

Officers: Tony Brown, Chief Solicitor
Denise Ogden, Head of Neighbourhood Management
Amanda Whitaker, Democratic Services Manager
Angela Hunter, Principal Democratic Services Officer

41. APPOINTMENT OF CHAIR

In the absence of both the Chair and Vice Chair, Councillor Rob Cook was appointed Chair for the duration of the meeting.

42. APOLOGIES FOR ABSENCE

Apologies for absence were received from The Mayor, Stuart Drummond and Councillors Sandra Fenwick, Marjorie James and Carl Richardson.

43. DECLARATIONS OF INTEREST

None.

44. MINUTES OF THE MEETINGS HELD ON 22 NOVEMBER 2007 AND 11 JANUARY 2008

Confirmed.

45. MATTERS ARISING

Audit Committee Membership – It was noted that Members of the Audit Committee had been contacted by Democratic Services to ascertain if the meeting of the Audit Committee scheduled for 3 April 2008 was at a suitable time for Members to ensure a quorum was achieved. It was reported that three out of the five Members had confirmed they would attend with uncertainty from the other two. It was noted that this issue was to be discussed later on the agenda under the Chief Financial Officer's report.

Outside Body Review – The Democratic Services Manager informed Members that a good response had been received from the distribution of questionnaires from both outside organisations and Members. It was proposed to submit pro-formas which would include a summary of these responses to a future meeting of the Constitution Working Group for Members full consideration. It was suggested that an additional meeting of the CWG be arranged in conjunction with the Chair and Vice Chair to examine this issue in detail, prior to Group discussions in relation to representations on these organisations for submission to Annual Council.

Decision

That an additional meeting of the CWG be arranged in conjunction with the Chair and Vice Chair to examine this issue in detail, prior to Group discussions in relation to representations on these organisations for submission to Annual Council.

46. PROCESS OF RESIDENT REPRESENTATIVE'S ELECTION – *Head of Environmental Management*

The Head of Neighbourhood Management presented a report which gave the background to the appointment of resident representatives and included an extract from the Constitution stating the process. Recent years had seen an increase in the number of candidates nominated which created administrative difficulties with nominations being received so close to the election. It was proposed to improve the administration of nominations by simplifying the procedure as follows:

10.11 Co-opted resident members

(b) The election process

- iv) Nominations will be sought prior to 12 noon on the day of the election and voting will be by secret ballot. Following the election for the positions of Resident Representatives, the Resident Representatives elected shall elect one of their number to the office of Vice-Chair and another to act as substitute for the Vice-Chair.
- vi) In the event of a tied vote, a further vote will take place. If there is no outright result following this second vote, the Chief Solicitor shall decide between the individual candidates by lot

and allocate the resident position to the candidate who secures the lot.

Members were of the view that this was a sensible proposal but further suggested that candidates seeking election as a resident representative should be requested to secure the signatures of 10 residents to support their nomination. The Chief Solicitor sought clarification on whether Members wished the signatories to be checked against the electoral roll in the same way that signatories supporting local council election candidates were processed. Members felt that the same process should be followed including the fact that a signatory could only sign the nomination papers of one candidate.

Decision

That the Constitution be amended to reflect the changes proposed above and these be submitted to the next meeting of the Constitution Committee.

47. REVIEW AND APPROVAL OF COUNCIL ACCOUNTS AND AUDIT COMMITTEE MEMBERSHIP

The Chief Financial Officer presented a report which provided the background to the proposals to include the review of approval of the Council's accounts within the remit of the Audit Committee and to give consideration to increasing the membership of the Committee.

Members felt that an increase in the membership to include 7 members with the quorum remaining at 3 should avoid the frequency of inquorate meetings, but suggested that a review of the operation of the Committee be held in 6 months.

Decision

- (i) That the membership of the Audit Committee be increased to 7 Members with the quorum to remain at 3 Members and that this be reviewed in 6 months.
- (ii) That the review and approval of the Council's accounts be transferred to the remit of the Audit Committee from the new municipal year 2008/09.

48. REVIEW OF THE CURRENT DELEGATED AUTHORITY SCHEME AVAILABLE TO OFFICERS

In the absence of the Chair of Scrutiny Co-ordinating Committee, Councillor Jonathan Brash presented a report which formally reported back the recommendation of the Scrutiny Co-ordinating Committee in relation to the reallocation of funding for the purpose of a contract monitoring system. Whilst Members were satisfied that there had been no inappropriate transfer of funds on this occasion, they had concerns in relation to the £100k threshold made available to Directors under delegated authority. The Committee recommended that these findings be considered during the review of the Delegated Authority Scheme which was to be undertaken.

The Chief Solicitor added that a cross-party working group would be created to examine the Delegated Authority Scheme in the new municipal year.

Decision

That the findings of the Scrutiny Co-ordinating Committee be incorporated into the forthcoming review of the Delegated Authority Scheme.

49. DURATION OF PLANNING COMMITTEE MEETINGS

The Chair of Planning Committee, Councillor Rob Cook presented a report which formally reported back the recommendations of the Planning Committee in relation to the ongoing issue of the duration of Planning Committee meetings.

Although it was acknowledged that members of the Planning Committee did not wish a guillotine to be imposed on the duration of the Committee, it was suggested that when the meeting goes into general debate on each individual application, Members be given one opportunity only to speak during the debate and for the same duration as applicants and objectors, which is 4 minutes.

The Chief Solicitor advised that this would require amendments to the Constitution and these would be submitted to the next meeting of the Constitution Committee.

Decision

That the Constitution be amended to reflect the changes proposed above and these be submitted to the next meeting of the Constitution Committee.

50. ANY OTHER BUSINESS

Clarification was sought by Members on the issue of confidential reports etc, pink papers and their distribution to Members. The Chief Solicitor advised that under the Access to Information Rules, all Members were entitled to access to this information and to attend meetings where it was discussed. However, there were a number of exceptions in relation to particularly sensitive issues including child protection issues and some contract information.

It was suggested that the Chief Solicitor report back to Constitution Committee to clarify the Access to Information Rules and the distribution of confidential papers to Members including any such exemptions with justification for these exemptions.

Decision

That the Chief Solicitor prepare a briefing paper for submission to the next meeting of the Constitution Committee informing Members of the Access to Information Rules and distribution of confidential papers to Members, including any exemptions to this with justification for these exemptions.

CHAIRMAN

CONSTITUTION COMMITTEE

Report to Portfolio Holder
28th March 2008



Report of: Head of Procurement & Property Services

Subject: PROPOSED AMENDMENTS TO CONTRACT
PROCEDURE RULES

1. PURPOSE OF REPORT

- 1.1 To seek Constitution Committee endorsement of proposed changes to the Contract Procedure Rules (CPRs) & Article 14 of the Constitution, and submission of those changes to Council for approval and implementation.

2. BACKGROUND

- 2.1 The Council's Procurement Strategy is significant in bringing together several national agendas and setting them in a local context. The main drivers are:
- The National Procurement Strategy and Milestones
 - The Gershon Efficiency Agenda
 - The Council's Way Forward
 - The comprehensive Spending Review 2007.
- 2.2 The changes brought about by the Procurement Agenda have already resulted in a revised Procurement Strategy being adopted by the Council, the adoption of an e-Procurement Strategy, the production of the "Selling to the Council Guide" and the review & re-launching of the procurement guidance as the "Officers Guide to Procurement".
- 2.3 The work carried out to formulate these documents also identified the need to carry out an annual review of the CPRs, which form part of the Council's Constitution, in order to reflect the changing procurement environment brought about by the procurement agenda.
- 2.4 As the CPRs are "Standing Orders" within the Constitution, the Constitution requires any amendments to be referred to full 'Council'.

- 2.5 The amendments have been endorsed by the Finance and Efficiency Portfolio Holder at his meeting on 27th February 2008.

3. CONSIDERATIONS

- 3.1 A subgroup was formed from members of the Corporate Procurement Group (CPG) consisting of representatives for legal and procurement to consider the necessary changes and the resultant draft CPRs were circulated to and discussed with members of the CPG. As part of the review of the CPRs, it was identified that changes proposed to the CPRs would need to be reflected in the corresponding section of Article 14 of the Constitution in order to avoid possible contradictions. On 8th November 2007 the Draft CPRs & proposed amendments to Article 14 were submitted to the CPG for agreement.
- 3.2 The Corporate Management Team (CMT) have also discussed the proposed changes to the CPRs & Article 14, and endorsed those changes.
- 3.3 The finalised draft CPRs are attached at **Appendix 1**, with all amendments highlighted, by being typed in red. An additional briefing note is attached at **Appendix 2** which discusses the considerations and reasons for the proposed changes.
- 3.4 An extract from Article 14 of the Constitution is attached at **Appendix 3**, with all amendments highlighted, by being typed in red. A briefing note which discusses the considerations and reasons for the proposed changes to Article 14 is attached at **Appendix 4**.

4 RECOMMENDATIONS

- 4.1 That the Constitution Committee considers the proposed amendments to the Contract Procedure Rules & Article 14 of the Constitution.
- 4.2 That the Constitution Committee endorses the submission of the draft Contract Procedure Rules & Article 14 of the Constitution to Council for approval and implementation.

HARTLEPOOL BOROUGH COUNCIL – CONTRACT PROCEDURE RULES

Approved by Council 13th April 2006

Draft as at 23rd October 2007 – **Proposed additions / amendments /
deletions in Red.**

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CONTRACT PROCEDURE RULES

INTRODUCTION

Contracts covered by the rules

The following procedure rules apply to contracts entered into by the Council whether under authority exercised by the Executive (in respect of executive functions), Full Council (in respect of non-executive functions), a committee of either the Executive or the Council or an officer. The contracts to which they are applicable are contracts for the acquisition of goods, materials or services or for the execution of works, with certain exceptions set out in the rules.

The rules do not represent a total procedure package – rather they stipulate a number of requirements that must be complied with within any contract letting procedures adopted. For further details of the procedures to be followed in the procurement of goods and services, reference should be made to the Procurement Guidance (*Officers Guide to Procurement*), which gives a wider explanation of the Council's procurement policies and practices. Where significant expenditure is contemplated, the rules establish requirements in the context of 3 contract-letting concepts –

- Best Price basis - lowest price where price to be paid by Council;
highest price where price to be received by Council;
- Price/Performance – contractor to be selected on basis of combination of price and quality
- Partnering – contract includes:
 - establishment of partnering team
 - pricing policy
 - open-book policy
 - savings sharing formula.

Central Purchasing Contracts

Where goods or services are to be acquired of a nature in respect of which a central contract has been established by the North East Purchasing Organisation (NEPO) or the Council's Procurement Unit, such goods and services will be purchased through that contract unless the Chief Officer, following consultation with the Head of Procurement & Property Services, considers a special exemption can be made. Goods or services for which the Council has accepted a tender submitted to NEPO are outside the scope of the Contract Procedure Rules and will be obtained from the relevant supplier in accordance with the NEPO procedures.

Strategic Partnerships

Where goods or services are to be acquired of a nature in respect of which the Council has established a Strategic Partnership with another provider, such goods and services will be purchased through that Strategic Partnership. Only in exceptional circumstances and following consultation with the Head of Procurement & Property Services and the Chief Solicitor, will exemptions be made.

The rules and an In-house Provider

These rules do not apply when a decision is taken to have work executed by an in-house provider such as Neighbourhood Services, without competitive process. In such circumstances, the provider being a department or division of the Council, there is no contract as it is a fundamental principle of contract law that a party cannot contract with itself. Even where a competitive process has taken place and the work is awarded to the in-house provider on the basis of their bid, there is no contract.

This has the consequence that, when it is necessary for the in-house provider to have some part of the work done by an outside contractor, the contract with the outside contractor is a 'contract', rather than a 'sub-contract' (requiring specific contract provision regulating the relationship between the in-house provider and the external contractor which is outside the scope of this commentary). For the purposes of their bid as part of a competitive process, the in-house provider may wish to include elements of cost for an external contractor and provision is made for a higher limit for Informal/quotations procedures to be followed in such circumstances. Costs established through those informal/quotation procedures can then be used as the basis of the contract with the external contractor without further tendering procedures being followed. In these rules, such contracts are referred to as "In-house Bid Contracts".

Criteria for selection of Price/Performance and Partnering Contracts

Contracts will be of the Best Price type unless a decision has been taken that either a Price/performance contract or a Partnering contract is to be established. Considerations which will inform such a decision are likely to include: -

- Value of contract
- Nature of project - e.g. is the work involved of a specialist nature where the contractor's techniques, design talents, contacts with government departments, national agencies etc are likely to be material to any choice
- Frequency of need for services/work
- Importance of adherence to budget

- Client input throughout the project

Roles and Responsibilities

Responsibility for decision making and action under contract letting procedures and for monitoring of the application of the contract procedures will be spread over the Council, in the interests of both efficiency and probity. Statutory guidance indicates that there should be delegated to officers greater responsibility for discharge of executive functions.

The role of Members

The Executive or the Council

Most contracts will relate to executive functions and regulations provide that those functions may only be discharged by the Executive (either full Cabinet or an individual Portfolio Holder, as the case may be). In respect of contracts relating to their executive functions, the Executive will have the responsibility:

-
- To determine the project including general aims of the construction, or service to be acquired
- To establish the level of expenditure for the project
- To approve lists of selected tenderers prepared under Rule 2
- To determine the nature of the contract – best price, price/performance or partnering
- To determine the Price/Quality ratio in respect of a price/performance Contract or a Partnering Contract or other basis of assessment
- To determine the Budget Price in respect of a Partnering Contract
- To waive any element of the Contract Procedure Rules in the case of an individual contract or class or group of contracts

Occasionally, the necessity for a contract may arise in connection with non-executive functions. In such a case the roles set out above, to the extent that they may be relevant, will be discharged by the Council.

In preparing a report inviting a decision to enter into a contract, the responsible officer should structure the report so as to cover the matters which require decision as set out above thus ensuring that the nature of the action to be taken by officers following the decision is clear.

The Contracts Scrutiny Panel

In order to ensure probity and transparency in the award of contracts, the Contracts Scrutiny Panel will participate in the letting of contracts by monitoring their compliance with the Contract Procedure Rules at a number of stages, both during and after the completion of the contract procedure. In respect of any contract the Panel will have the responsibility:

- To receive and examine tenderers lists
- To open tenders
- To receive and examine reports on the outcome of price/performance and partnering contracts letting procedures

The role of Officers - The Chief Officer/Officer Team

The Chief Officer/Officer Team will have the responsibility:

- To prepare the specification
- To approve use of selected tendering list or, if none available, to determine the tendering list for the contract
- To advertise/issue invitations for expressions of interest
- To determine a marking mechanism for each contract or for categories of contracts
- To select contractors for participation in Price/performance and Partnering contracts procedures
- To interview contractors
- To evaluate proposals & contractors and allocate scores
- To approve the successful contractor

It is presumed that officers responsible for procuring goods, works and services under these rules are familiar with the powers delegated to officers under the Council's delegation scheme, at least to the extent that those powers enable an officer to take action without a specific authority from Members. Where an officer is given power to take action (e.g. to incur expenditure for which budgetary provision has been made), that power includes the power to enter into any contract necessary to secure the goods, works or services involved. In the interests of transparency, the requirement for tenders to be opened by the Contract Scrutiny Panel applies to contracts undertaken by an officer under delegated powers, but the responsible officer, rather than the Chief Solicitor would sign such a contract.

Electronic Procurement (e-Procurement)

The Councils E-procurement Strategy requires that whenever possible procurement shall be carried out electronically. All procurement carried out, on any e-procurement system approved by the Chief Solicitor and the Head of Procurement & Property Services, is subject to these Rules.

General

In the event of conflict between this Introduction and the following Contract Procedure Rules, the latter shall prevail

These rules are made in pursuance of Section 135 of the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001.

PART A - SCOPE OF CONTRACT PROCEDURE RULES**1 Application of Contract Procedure Rules**

- i) These rules apply to every contract for the supply of goods, materials or services or for the execution of works, so far as they are relevant to a contract of the type determined by the Executive or the Council (as the case may be), except as provided in (ii) below.
- ii) With the exception of (vii) below, these rules do not apply to contracts with professional persons or contractors for the execution of works or the provision of services in which the professional knowledge and skill of these persons or contractors is of the primary importance or where the contract is for the provision of caring services to children or vulnerable persons.
- iii) No exception from any of the rules shall be made otherwise than by direction of the Executive or the Council or in any case of urgency, the Chief Officer after consultation with the Monitoring Officer. A record of any exception from any of the provisions of these procedure rules shall be reported to the Contracts Scrutiny Panel at their next meeting, and shall specify the case or urgency by which the exception shall have been justified.
- iv) For the purposes of any financial limit referred to in the rules, if the application of the rules to a particular contract cannot be identified until after opening of any tender, the value of the contract shall be as estimated by the Chief Officer.
- v) Reference in these rules to any decision, authority or action of the Council, the Executive, the Contracts Scrutiny Panel or an officer shall be deemed to include reference to a decision approval or action of the responsible body or officer prior to as well as after the adoption of these rules.
- vi) The letting of any contract shall also comply with any legislation or regulations relevant to the contract, Health and Safety Regulations, the European Directive on public procurement, the Council's Financial Regulations and the Council's Procurement Strategy.
- vii) In respect of any contract to which, for whatever reason, the procedures set out in these rules do not apply, there shall be followed a procedure which:
 - has been determined and recorded prior to its commencement

- ensures a level of competition consistent with the nature and value of the contract
- is transparent and auditable
- provides value for money, and
- records the reasons for choosing the successful contractor

PART B - SELECTED TENDERERS LISTS

2 Compilation of Selected Tenderers Lists

- i) This rule applies where a decision has been made that a list shall be kept of persons to be invited to tender for contracts for the supply of goods, materials or services of specified categories, values or amounts, or for the execution of specified categories of work and such a list is not to be compiled in accordance with the Constructionline procedure formulated by or on behalf of the Department of Trade and Industry
- ii) The list shall include at least eight persons and shall:
 - be approved by the Executive and (subject to paragraph iv below) be maintained on behalf of the Executive by the Chief Officer;
 - contain the names of all persons who wish to be included in it and are approved by the Executive or Chief Officer/Head of Department, subject to no persons being included until the appropriate technical officer is satisfied that they have the capacity to undertake the contracts envisaged, the Chief Personnel Services Officer is satisfied that they have adequate Health and Safety arrangements and the Chief Financial Officer is satisfied that they are financially sound; and
 - indicate whether a person whose name is included in it is approved for contracts for all or only some of the specified values or amounts of categories.
- iii) At least **six weeks** before the list is first compiled, notices inviting applications for inclusion in it shall be published:
 - in one or more local newspapers circulating in the district,
 - **on the procurement pages of the Council's website,**
 - **on the Government Opportunities Portal - Supply2.gov.uk.**
 - and in one or more newspapers or journals circulating among such persons as undertake contracts of the specified values or amounts or categories.

See Note 1

See Note 2

- iv) The list may be amended by the appropriate Chief Officer as required from time to time and shall be reviewed as follows:
- Review to be carried out at intervals not exceeding 4 years, where an update of the list is carried out and notices inviting applications for inclusion in the list shall be published in the manner provided by paragraph (iii) of this standing order.
 - Update to be carried out at intervals not exceeding 2 years, where each person whose name appears in the list shall be asked whether s/he wishes his/her name to remain therein.

Any such amendment or update shall be reported to the Executive. Any such review shall be presented to the Executive for approval and then reported to the Contract Scrutiny Panel.

PART C - INFORMAL / QUOTATION PROCEDURES

3 Informal Procedure - Contracts under £5,000

For a contract for less than £5,000, reasonable enquiries shall be made to determine that the price is fair and reasonable.

4 Informal Quotations Procedure – Works contracts £5,000 - £20,000

For a contract for the execution of work up to £20,000 three quotations shall wherever possible be obtained.

5 Formal Quotations Procedure – Works contracts £20,000 - £50,000 Goods materials or Services Contracts £5,000 - £20,000 (In-house bid contracts £5,000 - £100,000)

See Note 3

In respect of contracts:

- for the execution of work up to £50,000 (£100,000 for In-house bid contracts [see Introduction to these Contract Procedure Rules]): or
- for the supply of goods materials or services up to £20,000 (£100,000 for In-house bid contracts)

at least three written quotations shall wherever possible be obtained.

PART D - BEST PRICE PROCEDURES

6 Works contracts over £50,000
Goods materials or Services Contracts over £20,000
(In-house bid contracts over £100,000)

See Note 3

- i) Except for contracts described in rule 6(ii), no contracts which exceed £50,000 (£100,000 in the case of an In-house bid contract) in value or amount for the execution of any work, or £20,000 (£100,000 in the case of an In-house bid contract) in value or amount for the supply of goods, materials or services shall be made unless public notice has been given in accordance with the Public Notice provisions (see rule 7).
- ii) Rule 6(i) does not apply to contracts which have been determined should be let under the Selected Tenderer provisions (see rule 8)

~~➔ the Price/Performance contracts provisions (see rule 10) or~~

See Note 4

~~➔ the Partnering contracts provisions (see rule 11)~~

or which relate to the following matters: -

- (a) Purchase by auction;
- (b) Work to be executed, or goods materials or services to be purchased, which are a matter of urgency;
- (c) The work to be executed or the goods, materials or services to be supplied consist of repairs to or parts for existing machinery or plant;
- (d) The goods, materials or services to be purchased are such that a substantial proportion of the price is likely to be attributable to haulage;
- (e) The purchase of goods, materials or services which are obtainable only from a limited number of contractors, but in such case a reasonable number of contractors shall be invited to submit tenders.
- (f) Purchase or repair of patented or proprietary article or articles sold only at fixed price;
- (g) The goods, materials or services to be purchased are such that effective competition is prevented by government control;

(h) The prices of the goods, materials or services to be purchased are controlled by a trade organisation or for other reasons there would be no genuine competition.

7 Public Notice provisions

i) At least **twenty eight days** public notice shall be given

See Note 5

- in one or more local newspapers circulating in the district,
- on the procurement pages of the Council's website,
- on the Government Opportunities Portal - Supply2.gov.uk.
- also, wherever the value or amount of the contract exceeds £100,000 in the case of execution of any works or exceeds **£40,000** in the case of supply of goods, materials or services in one or more newspapers or journals circulating among such persons as undertake such contracts,

See Note 2

See Note 6

expressing the nature and purpose of the contract, inviting tenders for its execution and stating the last date (not less than **28 days** after appearance of the public notice) when tenders will be received.

See Note 5

ii) After the date specified in the public notice, invitations to tender for the contract shall be sent to not less than **four** of the persons who applied for permission to tender, selected by the Chief Officer in the approved manner, either generally or in relation to a particular contract or category of contract or, if fewer than **four** persons have applied and are considered suitable, to all such persons.

See Note 7

8 Selected tenderers provisions

This rule applies where it has been determined that the invitation to tender for a contract is to be limited to persons whose names appear on a Selected Tenderers list compiled under rule 2. An invitation to tender for that contract shall be sent to at least **four** of those persons included in the list as being approved for a contract for that value or amount or of that category, or, if there are fewer than **four** such persons, to all such persons. If there are **four** or more such persons, the persons to whom invitations are sent shall be selected by the Chief Officer in the manner approved, either generally or in relation to a particular contract or to a category of contracts.

See Note 7

9 Acceptance of tender

A tender –

- other than the lowest tender if payment is to be made by the Council or

- other than the highest tender if payment is to be received by the Council,

shall not be accepted without the fact of and reason for the acceptance being recorded and notified to the Contracts Scrutiny Panel at their next meeting.

PART E - PRICE/PERFORMANCE CONTRACTS

10 Price/performance Contracts Provisions

This rule applies when it has been determined by the Executive, that the contractor shall be chosen on the basis of a combination of price and performance and for which a price/performance ratio has been determined.

- i)
 - (a) Where there is a relevant Select List of Contractors for the nature of work or service involved in the project, the Chief Officer shall invite such number of contractors from the list as s/he considers appropriate to indicate whether they are interested in undertaking the proposed works and, if so, to provide a list of all clients for whom they have worked in the 2 years prior to the invitation.
 - (b) Where there is no Select List of Contractors ~~the Chief Officer shall compile for examination by the Contracts Scrutiny Panel a list of contractors to whom the invitation referred to in para (a) above will be submitted~~ public notice requesting expressions of interest from contractors must given in accordance with the Public Notice provisions (see rule 7).
- ii) The Chief Officer shall select from the contractors who confirm their interest and provide relevant details those contractors who will be invited to submit ~~tenders (minimum number four – see rule 7 ii) and shall compile a list of those contractors for examination by the Contracts Scrutiny Panel. unless the list is identical to the one previously reported following para 10(i)(b) above.~~
- iii) Contractors invited to submit tenders will be required to provide method statements relevant to the contract.
- iv) Not fewer than 4 of the contractor's former clients will be requested to complete a Referee's Questionnaire (see Rule 24) except in the case of a contractor for whom Referee's Questionnaires have been obtained during the previous 6 months.
- v) An Agreed Marking Mechanism (see Rule 14) shall be applied to calculate the Price/performance Score of each contractor.

See Note 8

See Note 7

See Note 8

- vi) The contractor with the highest Price/performance Score will usually be awarded the contract.
- vii) The Price/performance Score of each contractor shall be entered into a Price/performance Score Matrix (see Rule 24) which shall be submitted to the Contracts Scrutiny Panel without any indication of the identity of the Contractor to which each Price/performance Score relates at their next meeting.
- viii) No notification of the identity of the successful contractor shall be given to the successful or any other contractor or otherwise made public prior to the meeting of the Contracts Scrutiny Panel to which the Price/performance Score Matrix has been submitted.

PART F - PARTNERING CONTRACTS

11 Partnering Contracts Provisions

This rule applies when it has been determined by the Executive that there shall be a Partnering Contract, namely a contract which includes all of the following provisions: -

- the establishment of a partnering team
 - the stipulation of a Pricing Policy, being a statement of the prices to be charged by the contractor for the purchase of the materials and items set out in the statement
 - a facility for the Council to examine all aspects of the contractors accounts for the contract and
 - a Savings Sharing Formula being a formula for the sharing between the contractor and the Council of savings achieved within a Partnering Contract
- i) (a) Where there is a relevant Select List of Contractors, the Chief Officer shall invite such number of contractors from the list as s/he shall consider appropriate to indicate whether they are interested in undertaking the proposed works under a partnering contract and, if so, to provide a list of all clients for whom they have worked in the 2 years prior to the invitation.
 - (b) Where there is no Select List of Contractors ~~the Chief Officer shall compile for examination by the Contracts Scrutiny Panel a list of contractors to whom the invitation referred to in para (a) above will be submitted~~ public notice requesting

See Note 8

expressions of interest from contractors must given in accordance with the Public Notice provisions (see rule 7).

- ii) The Chief Officer shall select from the contractors who confirm their interest and provide relevant details those contractors who will be given further consideration (minimum number four – see rule 7 ii) and shall compile a list of those contractors for examination by the Contracts Scrutiny Panel. ~~unless the list is identical to the one previously reported following para 11(i)(b) above.~~
- iii) In respect of each of the contractors so selected not less than 4 of the contractor's former clients shall be requested to complete a Referee's Questionnaire except in the case of a contractor in respect of whom Referee's Questionnaires have been obtained during the previous 6 months.
- iv) Responses to the Referee's Questionnaires shall be evaluated according to an Agreed Marking Mechanism and each of the 4 highest scoring contractors (or such greater number as may be determined by the Chief Officer) shall be invited to confirm their ability to complete the project for the project budget.
- v) Contractors who so confirm will be invited to-
 - provide details of the contractor's proposed overhead costs, profit element, contractors net project cost, and preliminaries costs, and
 - to attend interview by an Interview Panel who will allocate an interview score for each contractor.
- vi) The Partnering Score of each Contractor will be calculated by reference to an Agreed Marking Mechanism and entered into a Partnering Score Matrix which shall be submitted to the Contracts Scrutiny Panel without any indication of the identity of the Contractor to which each Partnering Score relates.
- vii) The proposal of the contractor with the highest Partnering Score will usually be accepted.

See Note 7

See Note 8

See Note 9

G - GENERAL PROVISIONS

12 Opening of tenders

- i) Tenders shall be opened at one time and only in the presence of: -
 - at least three members of the Contracts Scrutiny Panel; and

- the Chief Executive or an official of the Council designated by him/her.
- ii) Paragraph (i) of this Order shall not apply to tenders obtained by the In-house Provider for the purpose of compiling a bid as tender for submission by the In-house Provider, which tenders shall be opened by the Head of Procurement & Property Services and the relevant Head of Service or their nominated Officers.

13 Tenders to be returned in sealed envelopes

- i) Every notice of invitation to tender shall state that no tender will be received except in a plain sealed envelope which shall bear the word "Tender" - followed by the subject to which it relates - but shall not bear any name or mark indicating the identity of the sender. Envelopes shall be returned to the Chief Executive and once received shall remain in the custody of the Chief Executive or his/her nominee until the time appointed for their openings.
- ii) The Chief Executive or the Head of Service of the In-house Provider (as the case may be) shall keep a record of all tenders received.
- iii) (a) A Schedule of all tenders received (except tenders to which rule 12(ii) applies) shall be circulated to the Contracts Scrutiny Panel or shall be tabled by the Chief Executive at the Contracts Scrutiny Panel meeting at which they are under consideration;
- (b) No information shall be included in such schedule or given to the Panel by which any tenderer may be identified.

14 Agreed Marking Mechanism

No Price/performance procedure or Partnering procedure shall be commenced unless there has been agreed between the Chief Officer and the Council's Chief Internal Auditor, in respect of the particular contract, or in respect of contracts of the nature of the contract in general, an Agreed Marking Mechanism complying with Rule 24. The contractors shall be informed of the elements to be marked and of the comparative importance of each element as a percentage of the available marks.

15 Contracts to be in writing

Every contract **other than those involving the use of Procurement Cards and having a value or amount of £2000 or less which exceeds**

See Note 10

~~£2,000 in value or amount~~ shall be the subject of a Council order or other formal contract and shall specify

- (a) the work, materials, matters or things to be furnished, had or done;
- (b) the price to be paid, with statement of discounts or other deductions; and
- (c) the time or times within which the contract is to be performed.

Where the value of the contract exceeds the financial limits which require a tender process to take place (see rule 6) the contract must be the subject of a formal written contract signed in accordance with rule 20.

See Note 11

16 Liquidated Damages and Performance bonds

Every contract which exceeds £100,000 in value or amount and is either for the execution of works or for the supply of goods, materials or services, shall, unless the Chief Officer otherwise decides after consultation with the Chief Solicitor, provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed, and the Council shall also require and take sufficient security for the due performance of any such contract. In the case of any such contract for the execution of works such security shall be provided by requiring the retention of a proportion of the contract sums payable until the work has been satisfactorily completed and maintained and, unless the Chief Officer, after consultation with the Chief Solicitor considers it unnecessary in any particular case, additional provision of a bond for due performance.

17 Other remedies for breach

In every contract for the supply of goods, materials or services which exceeds £2,000 in value or amount a clause shall be inserted to secure that, should the contractor fail to deliver the goods, materials or services or any portion thereof within the time or times specified in the contract, the Council, without prejudice to any other remedy for breach of contract, shall be at liberty to determine the contract either wholly or to the extent of such default and to purchase other goods, or materials of the same or similar description to make good (a) such default or (b) in the event of the contract being wholly determined the goods, materials or services remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods, materials or services exceeds the amount which would have been payable to the contractor in respect of the goods, materials or services replaced by such purchase if they had been delivered in accordance with the contract shall be recoverable from the contractor.

18 British Standards

Where an appropriate British Standards Specification or British Standard Code of Practice, issued by the British Standards Institution or Euronorm Standard, is current at the date of the tender, every contract shall require that all goods and materials used or supplied and all workmanship shall be in accordance with that Standard.

19 Prevention of Corruption

- i) There shall be inserted in every written contract a clause empowering the Council to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, in any of the following circumstances: -
 - (a) if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward –
 - for doing or forbearing to do, or for having done or forborne to do, anything in relation to the obtaining or execution of the contract or any other contract with the council or
 - for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or
 - (b) if the like acts shall have been done by any person employed by him/her or acting on his/her behalf (whether with or without the knowledge of the contractor) or

if in relation to any contract with the Council the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 Local Government Act 1972.
- ii) The form of invitation to tender shall include an assurance in writing from the tenderer that s/he will not follow, or has not followed, in relation to that tender, the undementioned practices: -
 - (a) communicating to a person other than the person calling for tenders for the execution of the work, the amount of any proposed tender in accordance with any agreement or arrangement so to communicate.
 - (b) adjusting the amount of any proposed tender for the execution of the work in accordance with any agreement or arrangement by the proposed tenderer, and any

person other than the person calling for tenders for the execution of such work.

20 Signature of contracts

- i) Except for contracts entered into by an officer in exercise of delegated powers, the Chief Solicitor shall be the agent of the Council to sign on behalf of the Council all contracts agreed to be entered into by or on behalf of the Executive or the Council.
- ii) Contracts which are for a value of £100,000 or more shall be either-
 - executed by the Chief Officer and the Chief Solicitor or the Chief Financial Officer or
 - executed under the Council's seal (to be affixed in the presence of the Chief Solicitor (or in his/her absence, ~~the Chief Executive~~ some other person authorised by him/her)).

See Note
12

21 Tenderers withdrawal

In the event of any person or firm withdrawing a tender, or declining to sign a form of contract upon being called on to do so after his/her or their tender has been accepted (whether accepted subject to the Council's approval or not) no further tender from such a person or firm shall, unless the Executive or the Council otherwise resolve, be considered for a period of three years.

22 Post contract variations and negotiations

- i) Except for a variation –
 - (a) which does not substantially affect the nature of the works services goods, materials or services to be supplied to the Council and does not increase the payment to be made by the Council, or
 - (b) is made in accordance with paragraph (ii)

a contract shall not without the authority of the Executive or the Council depart from the description of the works, goods, materials or services for which the quotation or tender was received.
- ii) This paragraph applies where all of the tenders received exceed the budget allocated for the project and the Chief Officer and the Head of Service relevant to the contract consider that amendments may be made to the specification which would result in a price in accordance with the budget. The lowest

tenderer and the next 2 lowest tenderers (if any) whose prices are not more than 125% of the price of the lowest tenderer shall each be provided with a schedule of variations and invited to submit a statement of the reductions to their tender which would apply to the variations.

- iii) Apart from discussions with contractors for the purpose of clarification of any element of a tender, or for the correction of arithmetic or other details, negotiations following receipt of tenders shall only take place in the following circumstances: -
 - (a) where a single tender has been received and the Chief Officer considers that negotiation may lead to more favourable terms to the Council, or
 - (b) when tenders cannot readily be evaluated and compared without discussion with the tenderers or
 - (c) with the approval of the Chief Financial Officer and the Chief Solicitor and the Monitoring Officer (if different) and any negotiations shall be conducted in accordance with paragraph (iv)
- iv) Discussion with tenderers for the purpose of negotiations under paragraph (iii) shall
 - take place only on Council premises
 - take place only with the knowledge of all tenderers
 - be attended by not less than 2 Council officers
 - be at a pre-determined time during normal office hours
 - be the subject of a comprehensive written record, signed by the Council officers in attendance and submitted to the Chief Financial Officer, the Chief Solicitor or the Monitoring Officer (if different) for approval

23 Nominated sub-contractors

This rule applies where a sub-contractor or supplier is to be nominated to a main contractor and the selection of the sub-contractor has not been undertaken in accordance with the Price/performance Contracts provisions (Rule 10) nor within the context of a project undertaken under the Partnering Contracts provisions (Rule 11).

- i) Where the estimated amount of the sub-contract or the estimated value of goods to be supplied by the nominated supplier does not exceed £5,000 then unless the Chief Officer is

of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders: -

- (a) The Chief Officer shall invite not fewer than three tenders for the nomination. The terms of the invitation shall require an undertaking by the tenderer that if s/he is selected s/he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his/her own obligations under the main contract in relation to the work or goods included in the sub-contract;
 - (b) The tenders shall be opened at one time and only in the presence of the Chief Executive or an officer designated by him/her;
 - (c) The Chief Executive shall maintain a record of all such tenders received;
 - (d) The Chief Officer or an officer designated by him/her shall nominate to the main contractor the person whose tender is, in his/her opinion, the most satisfactory one, provided that, where the tender is other than the lowest received, the circumstances shall be reported to the next meeting of the Contracts Scrutiny Panel.
- ii) Where the estimated amount of the sub-contract or the estimated value of goods to be supplied by a nominated supplier exceeds £5,000 then unless the Chief Officer (for reasons to be reported to the Contracts Scrutiny Panel at their next meeting) determines in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders: -
- (a) Tenders for the nomination shall be invited in accordance with Rules 4, 5, 6, 7 or 8 as the case may be, and Rule 13(i) shall apply as if the tender were for a contract with the Council. The terms of the invitation shall require an undertaking by the tenderer that if s/he is selected s/he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his/her own obligations under the main contract in relation to the work or goods included in the sub-contract;
 - (b) The tenders shall be opened at one time and only in the presence of the Chief Executive or an officer designated by him/her and the Chief Officer or an officer designated by him/her.
 - (c) The Chief Executive or an officer designated by him/her shall maintain a record of all such tenders received.

- (d) The Chief Officer or an officer designated by him/her shall nominate to the main contractor a person whose tender is in his/her opinion the most satisfactory, provided that where the tender is other than the lowest received, the circumstances shall be reported to the next meeting of the Contracts Scrutiny Panel.
- iii) It shall be a condition of the employment by the Council of any person (not being an officer of the council) to supervise a contract that in relation to such contract s/he shall comply with the requirements of paras. (i) and (ii) of this Rule 23 as if s/he were a Chief Officer of the Council.
- iv) Lists of tenders and quotations received in accordance with this Rule 23 shall be retained by the Chief Officer concerned and shall be available for inspection by the Members of Contracts Scrutiny Panel and the Chief Executive and the Chief Financial Officer.

PART H - GLOSSARY

24 Interpretation

Unless the context otherwise indicates, the following terms used in these rules have the meanings stated: -

“Agreed Marking Mechanism” is the mechanism which (before the issue of any invitation to tender or attend interview) has been agreed between the Chief Officer and the Council’s Chief Internal Auditor for the allocation of marks making up the Price/performance Score. The Agreed Marking Mechanism shall include the composition of an evaluation team being a panel of officers who shall allocate marks according to the Agreed Marking Mechanism. (see also Rule 14)

“Chief Officer” is the Chief Officer of the Council who is responsible for letting and supervising the completion of a contract or of contracts of a particular nature.

“Contractor’s Net Project Cost” is the balance of the budget price after deduction of the aggregate of the contractors expected profit and overheads or any other element of the contract which is identified by the Agreed Marking Mechanism as being deductible for the purpose of assessment of the Contractors Net Project Cost.

“Electronic Procurement (e-Procurement)” is a fully electronic procure-to pay process from initial requisition and ordering through to invoicing and payment, and can include e-Auctions, e-Purchasing, e-Tendering and Procurement Cards.

“e-Auctions” is the means of carrying out purchasing negotiations via the Internet. A real time event that occurs online allowing multiple suppliers in different geographic locations to place and modify bids simultaneously.

“e-Purchasing” is a system to automate and extend manual buying processes from the creation of a requisition through to the payment of suppliers. It encompasses back office systems, e-marketplaces and portals and supplier websites.

“e-Tendering” is systems or solutions to enable the tendering process to be conducted via the Internet. Including advertisement of requirement, documentation production, supplier registration, electronic exchange of documents between supplier and buyer, opening of tenders, evaluation of submissions, contract award and publication.

“Executive” is the executive members of the Council acting together as the Cabinet or individually in accordance with the Executive Delegation Scheme currently applicable.

“Interview Panel” is a panel comprising:

- 2 officers appointed by the Chief Officer
- 2 officers appointed by the Client Department, and
- a representative(s) of any other relevant body or department

and who, when meeting, shall be accompanied by an observer appointed by the Chief Officer.

“Partnering Contract” is a contract which includes all the following provisions: -

- i) the establishment of a partnering team
- ii) the stipulation of a Pricing Policy, being a statement of the prices to be charged by the contractor for the purchase of the materials and items set out in the statement
- iii) a facility for the Council to examine all aspects of the contractors accounts for the contract and
- iv) a Savings Sharing Formula being a formula for the sharing between the contractor and the Council of savings achieved within a Partnering Contract

“Partnering Score Matrix” is a matrix showing in respect of all contractors each element of their Partnership Score and their total scores.

“Price/performance Score Matrix” is a matrix showing in respect of all contractors each element of their Price/performance Score and their total scores.

“Price/performance Contract” is a contract for which the contractor is to be chosen on the basis of a combination of price and performance.

“Price/performance Ratio” is the comparative importance of price and performance of the product or service expressed as a percentage ratio.

“Procurement Cards” are charge cards which work in a similar way to credit cards and can be used to purchase goods and services. Can be open to use by any suppliers or have controls placed upon them by the issuer to limit their use to certain suppliers and/or commodities. They are usually used to process low-value, high-volume transactions.

“Project information” comprises: -

- i) Drawings, if any, showing outline of the construction works required
- ii) A cost plan, if available, indicating the total budget for the project
- iii) A specification of materials from which the cost plan has been prepared
- iv) The timescale for the construction works
- v) The substantial form of the contract
- vi) Any other information necessary to enable the contractor to assess the nature and likely cost of the project

“Referee’s Questionnaire” is a questionnaire addressing the following aspects of a contract, namely:

- performance;
- quality;
- adherence to timetable;
- health and safety issues; and
- any other matters considered by the Chief Officer to be relevant to assessment of the service provided by the contractor.

Briefing Notes on Considerations and Reasons for Proposed Changes to Contract Procedure Rules (CPRs)

Numbered Notes are cross referenced on Draft CPRs

General

As part of this review of the Council's CPRs, a comparison with the CPRs of 2 other local authorities, namely 'Redcar & Cleveland' and 'Middlesbrough' Borough Councils, and the Regional Centres of Excellence (RCOE) & Eversheds model CPRs was also carried out. See section entitled 'Comparison' at the end of this briefing note. This "comparison" aided in identifying, and suggested, some of the amendments included in the Draft CPRs this document relates to.

NB: Redcar & Cleveland and Middlesbrough's CPRs were chosen for comparison due to the availability of their CPRs on the Intranet.

Note 1 - Page 9 of the draft CPRs

Public Notices inviting applications to join the Councils Selected Tenderers Lists.

The current CPRs only require 4 week notice to be given. However, recent guidance from the Office of Government Commerce (OGC) and the European Commission has indicated that no matter the value of any public sector procurement, the minimum period for public notices should be 37 days.

It is therefore proposed that the Public Notice period should be increased to six weeks, to comply with this requirement. (Six weeks being a more easily recognisable period than 37 days)

Note 2 – Page 9 of the Draft CPRs

Inclusion of 'Electronic' Methods of Advertising.

The guidance and requirements of both the OGC & EC referred to in Note 1 also require that all public sector contracting opportunities should be advertised on a European Union (EU) wide basis.

The proposed inclusion of the Council's own website as one of the methods of electronic advertising of contract opportunities not only complies with these requirements but additionally contributes towards the Council's and the Government's 'e-Government' objectives. At the same time it strengthens the opportunities for local businesses to be aware of contracting opportunities, as they are more likely to refer to the Councils Website, than non local companies.

The proposal to include, as a second method of electronic advertising of contracting opportunities, the use of the 'Supplier Route to Government Portal' – Supply2.gov.uk, again complies with the EU wide advertising requirements and e-government objectives. This 'Portal' automatically advises registered suppliers of any contracting opportunities for locations and goods/services for which they have declared an interest. This method of advertising aids local businesses as it is free of charge for them to use, if they limit their 'interest' to their own locality (their 'home' Council area, plus neighbouring / adjoining Councils).

In the age of e-government, continuing to publish public notices / advertise contracting opportunities in the local press as well as adopting electronic methods, continues to aid local businesses in being aware of contracting opportunities with the Council. Some councils (e.g. Middlesbrough) now use electronic methods only.

Note 3 – Pages 10 & 11 of the Draft CPRs

Increases in Tender Limits

The comparison with other CPRs discussed in 'General' above, identified various approaches to the level being set by neighbouring Councils (which were significantly higher than the level currently used in our CPRs) and the levels being suggested by the RCOEs. When the CPRs were last reviewed it was agreed that they should be amended, if applicable, to take account of inflation and general rises in costs.

As well as establishing the level at which formal tendering processes should be applied, by default these levels also indicate the level below which quotations and not tenders are acceptable. The significance of this is that when 'quotations are applied, there is no requirement to employ the strict advertising regime described in Note 2, therefore making it easier for the Council to direct these opportunities towards local providers, therefore supporting the sustainability of the local economy. This will be highlighted in the Council's sustainable Procurement Strategy and Guidance for Officers.

It is therefore proposed that the Tender Limits should be increased:
from £45K to £50K for works (in line with the suggested RCOEs limits);
by a similar amount from £15K to £20K for goods & services;
and from £75K to £100K for in-house works bids (double the 'normal' works limit as used by our neighbouring authorities).

Note 4 – Page 11 of the Draft CPRs

Exceptions to Public Notice (Advertising) Requirements

The current CPRs, if taken literally, do not require public notice to be given for contracts which have been determined by Portfolio Holder shall be let as a 'Price/Performance or 'Partnering' contract. They simply require that a list of those invited to tender be submitted to Contract Scrutiny Panel. This exception does not comply with the advertising requirements outlined in Note 2, and also appears to be in conflict with the principles of transparency and competition in contracting.

This amendment is therefore proposed so that the requirement for Public Notice (advertisement) applies to price performance and partnering contracts. This is supplemented by the amendments to both the price/performance and partnering contract provisions outlined in Note 8 below.

Note 5 - Page 12 of the Draft CPRs

Period of Public Notice

The current CPRs only require that 10 days public notice be given. The comparison discussed in 'General' above, identified public notice of 28 days being applied in other authority's CPRs. An increase in this period would also benefit Small & Medium-sized Enterprises (and by definition most local companies) who do not have

the resources to respond to such notices in a short period of time, therefore supporting the sustainability of the local economy.

It is therefore proposed that this period be increased to 28 days.

Note 6 – Page 12 of the Draft CPRs

Financial limit requiring additional public notice

The financial limit for additional public notice “in one or more new papers or journals circulating among such persons as undertake such contracts” for goods and service had historically been double the tender limit.

Therefore, if the proposal to increase the tender limit for goods & service to £20K is accepted, it is further proposed that the limit requiring additional public notice should be increased to £40K.

Note 7 – Pages 12, 13, 14 & 15 of the Draft CPRs

Number of Persons Invited to Tender

Current CPRs set the minimum number to be invited to participate as: 3 for quotations; 3 for tenders; and 5 for EU limit tenders.

The comparison discussed in ‘General’ above, shows that it is usual for the number to increase by one, as the complexity of the process increased. An increase in the minimum number of tenders would also increase the chances of a tender from a local company being considered and increases the opportunity for the tender to be awarded to a local company, therefore supporting the sustainability of the local economy. This opportunity to invite local companies will be included in the Council’s Sustainable Procurement Strategy and Guidance for Officers.

It is therefore proposed that the number of ‘tenders’ be increased from 3 to 4.

Note 8 – Pages 13, 14 & 15 of the Draft CPRs

Requirement for Public Notice to be given for Price Performance & Partnering Contracts

Further to Note 4 above, this amendment proposes that, “where there is no Select List of Tenderers” which can be used, Public Notice (advertisement) of the contract opportunity must be made. Plus, as a list of those invited to tender will now always be reported to Contract Scrutiny Panel, there is no requirement for the clause “unless the list is identical to the one previously reported etc”.

Note 9 – Page 15 of the Draft CPRs

Number of Referees Questionnaires requested to be completed

Current CPRs require that for Price/Performance contracts “Not fewer than 4 of the contractor’s former clients will be requested to complete a Referee’s Questionnaire”, but for Partnering contracts, “not less than 2 of the contractor’s former clients shall be requested to complete a Referee’s Questionnaire”. This would appear to be inconsistent when most would consider that a Partnering contract should be equally, if not more, important than a Price/Performance contract.

It is therefore proposed that the number of Referee's Questionnaire required for a Partnering Contract be increased to 4.

Note 10 – Page 17 of the Draft CPRsContracts to be in writing.

Current CPRs only require contracts “which exceeds £2,000 in value or amount shall be the subject of a Council order or other formal contract”. This limit allowed the Council to introduce the use of Procurement Cards “to process low-value, high-volume transactions”. However, it is accepted practice in the commercial environment that, other than when Procurement Cards are used, all contracts should be the subject of at least a written order, and this requirement is one which was required of, and has been implemented in, the Council's Financial Management system.

It is therefore proposed that CPRs be amended to reflect that “other than those involving the use of Procurement Cards and having a value or amount of £2000 or less” all contracts shall be the subject of a Council order or other formal contract”.

Note 11 – Page 17 of the Draft CPRsRequirements for Formal Written & Signed Contracts

Current CPRs allow contracts with a value up to £100k to be subject to a written order without the need for a formal written/signed contract. It is considered by both Legal & Procurement Officers, and has been confirmed by comparison with other authorities CPRs, that if a contract is important or valuable enough to require that a formal tender process be carried out, then this contract must be sufficiently important enough to justify that a formal written/signed contract be drawn up. Not just the subject of an order, if valued at less than £100K.

It is therefore proposed that where the value of the contract exceeds the financial limits which require a tender process to take place, the contract must also be the subject of a formal written & signed contract.

Note 12 – Page 20 of the Draft CPRsExecution of contracts under the Council's common seal

Current CPRs require the common seal to be affixed to contracts by the Chief Executive in the absence of the Chief Solicitor. However, Article 14.05 of the Constitution stipulates that, when necessary, the affixing of the common seal to “any document” can be made “by the Chief Solicitor or some other person authorised by him”.

It is therefore proposed to amend the CPRs to agree with Article 14.05 of the Constitution.

Comparison

CATEGORY	HBC Current £K	MBC £K	R&CBC £K	RCOE Eversheds Model £K	HBC Proposed £K
<u>Value for Money</u>					
Works	<5	<10.2	15	5	<5
Goods	<5	<5.2	15	3	<5
Services	as Goods	as Goods	as Works	3	as Goods
For In-house bids	<5	Double above			<5
<u>Informal Quotes</u>					
Works	3 5 to 20	n/a	n/a	n/a	3 5 to 20
Goods & Services	n/a	n/a	n/a	n/a	n/a
<u>Formal Quotes</u>					
Works	3 20 to 45	3 10.2 to <103.5	3 15 to <100	3 >5 to 50	3 20 to 50
Goods	5 to 15	5.2 to <36.3	15 to <50	>3 to 25	5 to 20
Services	as Goods	as Goods	as Works	as Goods	as Goods
For In-house bids	5 to 75	Double above	as above		5 to 100
<u>Tenders</u>					
Works	3 >45	4 103.5 to <517.5	4 100	? >50	3 >50
Goods	>15	36.3 to <103.5	50	>25	>20
Services	as Goods	as Goods	100	>25	>20
For In-house bids	>75	Double above	as above		>100
<u>OJEU etc</u>					
Tenders	5	5	5	5	5
Works	>OJEU limit	517.5	>OJEU limit	>OJEU limit	>OJEU limit
Goods & Services	>OJEU limit	103.5	>OJEU limit	>OJEU limit	>OJEU limit
For In-house bids	>OJEU limit	Lower of double above or OJEU limit	>OJEU limit	>OJEU limit	>OJEU limit
<u>Tender Adverts.</u>					
Notice or OJEU (37)	10 days Y	28 days Y	28 days Y	As OJEU Y	28 days Y
<u>Form of Contract</u>					
Order	>2	All	All		All
Written/signed	>2	As Tender Limits	W - 100, G&S - 50		As Tender Limits
CO	>100	As Tender Limits	either /		>100
CO + CS or CFO	or	>100	or		or
Sealed					

Extract from **Part 2 – Articles of the Constitution**

Draft as at 23rd October 2007 – **Suggested additions /
amendments / deletions in Red.**

Article 14

FINANCE, CONTRACTS AND LEGAL MATTERS

14.02 Contracts

Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution.

14.04 Authentication of documents

(2nd paragraph)

~~Any contract with a value exceeding £2000 entered into on behalf of the local authority in the course of the discharge of an Executive function shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the common seal of the council attested by at least one officer.~~

See Note 1

Briefing Notes on Considerations and Reasons for Proposed Changes to Article 14 of the Constitution

Numbered Notes are cross referenced on the Draft Extract from Article 14

General

As part of the review of the Council's Contract Procedure Rules (CPRs), it was identified that changes proposed to the CPRs would need to be reflected in the corresponding section of Article 14 of the Constitution. The following amendment to Article 14 is therefore proposed to ensure that CPRs and Article 14 are consistent.

Note 1 – second paragraph of Article 14.04.

The requirement for contracts to be in writing and the signature of contracts is provided for (and is more specific) in paragraphs 15 & 20 of the CPRs. The second paragraph of Article 14 currently contradicts the CPRs, as it states that:

“Any contract.....shall be made in writing”, as opposed to “Every contract other than those involving the use of Procurement Cards.....shall be the subject of a Council order or other formal contract” which appears in the CPRs, and

Such contracts must be signed by at least two officers (or made under the common seal), when the CPRs and the Council's officer delegation scheme both allow contracts with a value of less than £100K to be signed by one officer.

It is therefore proposed that this paragraph be deleted to avoid this contradiction.

NB: the requirement to follow the rules as set in the CPRs has already been established in the 'Articles of the Constitution', in Article 14.02 which states that “Every contract made by the Council will comply with the Contract Procedure Rules set out in Part 4 of this Constitution”. Therefore this deletion does not detract from the Constitution; it enhances them by directing that the more specific requirements of the CPRs must be followed.

CONSTITUTION COMMITTEE

28 March 2008



Report of: Chief Solicitor & Head of Neighbourhood Management

Subject: PROCESS OF RESIDENT REPRESENTATIVE'S ELECTION

1. PURPOSE OF REPORT

To consider and approve revised arrangements for the election of Resident Representatives

2. BACKGROUND

At their meeting on 11th March 2007, the Constitution Working Group received the attached report from the Head of Neighbourhood Management (Appendix 1) reporting on proposals to amend the requirements for submission of nominations for service as Resident Representatives on the Council's Consultative Forums.

The report described proposed changes to the submission of nominations that are currently required for submission at the meeting at which the nominations are to be considered. An election then takes place in the event of there being a greater number of nominations than the number of resident representatives to be appointed. The proposed arrangement is for nominations to be submitted no later than 12 noon on the day before the meeting, thereby avoiding administrative difficulties arising from the receipt of nominations so close to the election process.

The Constitution Working Group was in agreement with the proposed change. However, they considered that further changes would also be appropriate, principally in order to ensure that the representatives appointed are truly representative of members of the community. In this respect, they considered that nomination should be conditional upon the endorsement of the nomination paper by 10 residents of the area in question. Election rules allow supporters to sign nomination papers up to the number of vacancies e.g. for 3 vacancies electors can subscribe 3 nomination papers.

Members appreciated that such arrangements could impact adversely upon the ability of a forum to attract sufficient nominations.

Members wish the approved arrangements to be in place for the election of resident representatives to take place immediately after the May Council elections. Any changes to the nomination process needs to be consulted upon with all stakeholders. Members also acknowledged that the more detailed requirements would place a burden on elections staff and wish to be informed of the expected scale of additional work load likely to occur.

A meeting with the Elections Officer on 17 March to discuss the impact on elections staff highlighted the current elections software is not suitable for this process, as such we would need to investigate alternative arrangements.

The suggestions approved by the working group would necessitate that the relevant provisions of the Constitution should read –

“Co-opted resident members

(b) The election process

- iv) Nominations will be sought prior to 12 noon on the day of the election. *A nomination will not be valid unless it is subscribed by 10 residents of the neighbourhood forum area for which the nomination is made.* Voting will be by secret ballot. Following the election for the positions of Resident Representatives, the Resident Representatives elected shall elect one of their number to the office of Vice-Chair and another to act as substitute for the Vice-Chair.
- vi) In the event of a tied vote, a further vote will take place. If there is no outright result following this second vote, the Chief Solicitor shall decide between the individual candidates by lot and allocate the resident position to the candidate who secures the lot.”

3. PROPOSALS

The Constitution working group meeting of 11th March 2008, Members suggested that the Constitution be amended to reflect the changes to the existing nomination timetable.

4. RISK IMPLICATIONS

Resident representative posts not filled due to complexities in the process

5. FINANCIAL & STAFF CONSIDERATIONS

Additional resources required to adapt election software together with additional staffing resources required to process nominations

6. RECOMMENDATIONS

The Constitution be amended to reflect the changes to the existing nomination timetable.

Prior to changes to the nomination process itself, a scheme needs to be developed and all stakeholders consulted to upon to ensure full support of the new process.

7. REASONS FOR RECOMMENDATIONS

Ensuring the democratic process is robust whilst recognising the need to consult and the administrative burden which could result

8. BACKGROUND PAPERS

Process of Resident Representatives' Election, Constitution working group
11 March 2008

10. CONTACT OFFICER

Tony Brown, Chief Solicitor

Denise Ogden, Head of Neighbourhood Management

Appendix 1

CONSTITUTION WORKING GROUP

HEAD OF NEIGHBOURHOOD MANAGEMENT

PROCESS OF RESIDENT REPRESENTATIVE'S ELECTION

1.0 Purpose of Report

- 1.1 To seek approval to amend the election process for Resident Representatives.

2.0 Background

- 2.1 Resident Representatives were first co-opted onto the Neighbourhood Forums in 2002. They comprise one third of the membership of each Neighbourhood Forum (North 8, Central 10 and South 7).
- 2.2 Resident Representatives are elected for a two year term of office, aligned to the election of Councillors. The term of office expiring on the date of the meeting of the Neighbourhood Consultative Forums for the area following the date of Council election, at which a meeting for the election of Resident Representatives would take place.
- 2.3 The elections are supervised by the Chief Solicitor of the Council and conducted by an independent facilitator and within the Neighbourhood Consultative Forum areas on an evening in public buildings such as the Central Library and/or Civic Centre for the Central Forum area, West View Community Centre or the Borough Hall for the North and Owton Manor or Seaton Carew Community Centres for the south.
- 2.4 The Constitution currently states:
- 10.11 (b) The Election Process
- (iv) Nominations will be sought at the meeting and voting will be by secret ballot. The election for the position of Vice Chair will be conducted first, followed by the election for the positions of resident representatives.
- (vi) In the event of a tied vote, a further vote will take place until a majority is obtained.
- 2.5 The role of Resident Representative has developed significantly over the years which has led to an increase in the numbers of candidates nominated

creating administrative difficulties with nominations being received so close to the election.

- 2.6 To improve the administration of nominations and simplify procedures on the election evening, the following change is proposed:

10.11 Co-opted resident members

(b) The election process

- iv) Nominations will be sought prior to 12 noon on the day of the election and voting will be by secret ballot. Following the election for the positions of Resident Representatives, the Resident Representatives elected shall elect one of their number to the office of Vice-Chair and another to act as substitute for the Vice-Chair.
- vi) In the event of a tied vote, a further vote will take place. If there is no outright result following this second vote, the Chief Solicitor shall decide between the individual candidates by lot and allocate the resident position to the candidate who secures the lot.

3.0 Recommendation

- 3.1 Approval is sought to amend election process as per 2.6 above. Members to note the report.

CONSTITUTION COMMITTEE

28 March 2008



Report of: Chief Solicitor

Subject: REVIEW AND APPROVAL OF COUNCIL
ACCOUNTS AND AUDIT COMMITTEE
MEMBERSHIP

1. PURPOSE OF REPORT

The purpose of this report is to invite the Committee to recommend to Council changes to the remits of the Audit Committee and the General Purposes Committee and the number of members of the Audit Committee

2. BACKGROUND

At a series of meetings the General Purposes Constitution Committee and Working Group have considered whether it is appropriate that the approval of the Council's accounts should be within the remit of the General Purposes Committee. It has been accepted that the nature of the task is such that the skills and interests of the Audit Committee are more appropriate. In the course of discussion, it has been noted that the Audit Committee is frequently inquorate and consideration has been given to addressing this issue, either by increasing the membership of the committee or by reducing the quorum. The view has been taken that the quorum should remain the same (being the default quorum for a committee of the Council) but that a small increase in the number of members may have the desired effect of achieving quorate meetings of the committee.

3. PROPOSALS

The changes outlined above necessitate changes to the entries in the Constitution Part 3 Responsibility for Functions. The appendix to this report comprises the current entries for both the Audit Committee and the General Purposes Committee showing text which is to be removed scored through, and text which is to be added underlined.

4. RECOMMENDATION

The committee is invited to recommend the changes shown to the Council.

5. CONTACT OFFICER – Tony Brown Chief Solicitor

General Purposes Committee	
Membership:	9 Chair – Vice Chair of the Council – Councillor J Marshall Councillors: Akers-Belcher, Fleming, Henery, Griffin, Morris, Shaw, Wallace and Wistow.
Quorum :	3
FUNCTION	DELEGATION
<p>1. Functions relating to elections:</p> <ul style="list-style-type: none"> a) Power to assign officers in relation to requisitions of the electoral registration officer b) Duty to provide assistance at European Parliamentary Elections c) Power to divide electoral divisions into polling districts at local government elections d) Powers in respect of holding elections e) Power to pay expenses properly incurred by electoral registration officers f) Duty to declare vacancy in office in certain cases g) Duty to give public notice of a casual vacancy h) Power to make temporary appointments to parish councils 	<p>Chief Solicitor</p> <p>Chief Solicitor</p> <p>Chief Solicitor</p> <p>Chief Solicitor</p> <p>Chief Solicitor</p>

General Purposes Committee (continued)	
Function	Delegation
i) Power to determine fees and conditions for supply of copies of, or extracts from, election documents.	Chief Solicitor
j) Power to submit proposals to the Secretary of State for an order under section 10 (pilot schemes for local elections in England and Wales) of the Representation of the People Act 2000.	
2. Functions relating to local government pensions, etc., except those reserved to the General Purposes (Appeals and Staffing) Committee	
3. Power to approve authority's statement of accounts, income and expenditure and balance sheet or record of receipts and payments (as the case may be)	
43. Power to make payments or provide other benefits in cases of maladministration, etc.	Chief Solicitor within agreed thresholds
54. Power to make agreements with other local authorities for the placing of staff at the disposal of those other authorities.	
65. To advise the executive on the appointment of school governors.	

APPENDIX 1

Audit Committee	
Membership:	5-7 Councillors: Preece (Chair), G Lilley (Vice Chair), Hall, Wallace and Wistow
Quorum:	3
FUNCTION	DELEGATION
<ol style="list-style-type: none"> 1. Promote the independent internal audit function and raise awareness of internal control, reviewing controls and financial operations and developing an anti-fraud culture. 2. Focussing and monitoring the Council's audit resources by reviewing the plans of the external auditor and the internal audit team to ensure that audit work is co-ordinated. 3. Monitoring audit performance by including reporting schedules and action on recommendations. 4. <u>Power to approve authority's statement of accounts, income and expenditure and balance sheet or record of receipts and payments (as the case may be)</u> 	

CONSTITUTION COMMITTEE

28 March 2008



Report of: Chief Solicitor

Subject: PLANNING COMMITTEE REVIEW OF DURATION
AND SPEAKING RIGHTS OF MEMBERS

1. PURPOSE OF REPORT

The purpose of this report is to invite the Committee to recommend to Council changes the Constitution arising from concerns expressed by Members regarding the length of some Planning Committee meetings and consequent clashes with other meetings where members' attendance is necessary.

2. BACKGROUND

Following the issue being raised at a meeting of the Constitution Working Group, and it being noted, on the advice of the Chief Solicitor that the rules relating to the duration of Council meetings did not apply to meetings of committees, a working group of the Planning Committee was formed to address the issue.

The Planning Working Group considered a variety of features of the meetings of the Planning Committee as set out in the report of the Chair of Planning Committee submitted to the Constitution Working Group at their meeting on 11th March 2008 (Appendix 1)

The Constitution Working Group accepted the views of the Planning Working Group, but in addition considered that, whilst there should be no limit on a member's right to ask as many questions as they wished (subject always to the ability of the Chair to control abuse of that facility) members should be restricted to 1 speech of not more than 4 minutes during the debate section of the consideration of an application.

The question arises what mechanism is most appropriate to achieve the desired result. Appendix 2 sets out the relevant provisions of the Constitution Part 4 Rules of Procedure, namely the relevant Council Procedure Rules (including the provision applying those rules to meeting of

committees. One approach might be to supplement rule 26 with a proviso giving effect to the proposed change for the Planning Committee. However, Members might think it inappropriate to seek to include in the Constitution variations such as those now contemplated, as, if the precedent were followed in other committees, this could lead to unnecessary complexity and confusion. An alternative which might find favour with Members is that rule 26 be amended by the inclusion of words permitting Committees to make their own procedural arrangements. Such an approach would then simply necessitate a change to the Order of Proceedings for Public involvement in Planning Committees, by the inclusion of the proposed changes.

3. PROPOSALS

Members may, therefore, consider the insertion at the commencement to rule 26.3 of the phrase “Subject to any variation approved by a committee for regulating its own proceedings”.

4. RECOMMENDATION

The committee is invited to recommend the changes shown to the Council.

5. CONTACT OFFICER – Tony Brown Chief Solicitor

Extracts from Constitution

Part 4 – Rules of Procedure

Council Procedure Rules

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14.3 Content and length of speeches

Speeches must be directed to the question under discussion or to a personal explanation or point of order. No speech by the mover of a motion or an amendment may exceed 10 minutes, and no other speech may exceed 4 minutes without the consent of the Council.

14.4 When a member may speak again

Except under rule 14.1(v) a Member who has spoken on a motion may not speak again whilst it is the subject of debate, except:

- i) to speak once on an amendment moved by another Member;
- ii) to move a further amendment if the motion has been amended since s/he last spoke;
- iii) if his/her first speech was on an amendment moved by another Member, to speak on the main issue (whether or not the amendment on which s/he spoke was carried);
- iv) in exercise of a right of reply;
- v) on a point of order; and
- vi) by way of personal explanation.

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26 APPLICATION OF PROCEDURE RULES

26.1 All of the Council Procedure Rules apply to meetings of full Council.

26.2 None of the rules apply to meetings of the executive.

26.3 Only Rules 4–8, 11–14 (but not rule 14.5), 16–18, 20–25 (but not Rule 21.1) apply to meetings of committees and sub-committees.

CONSTITUTION WORKING GROUP

6th March 2008

The meeting commenced at 4.30 p.m. in the Civic Centre, Hartlepool

Present:

Councillor Richardson (In the Chair)

The Mayor, Stuart Drummond

Councillors Brash, Flintoff, A Marshall, Morris, Preece and Simmons.

Cabinet Members had been invited to attend the meeting. The following Cabinet Member was in attendance:-

Councillor Cath Hill

Officers:- Tony Brown, Chief Solicitor
Amanda Whitaker, Democratic Services Team Manager

41. Remit of Contract Scrutiny Panel

Consideration has been given by the Constitution Working Group and the Contract Scrutiny Panel to the remit of the Contract Scrutiny Panel. In particular, members have been concerned to ensure that the Contract Scrutiny Panel had a recognised and meaningful role, which provided members of the Panel with a greater involvement in the contracting process. Latterly, the Contract Scrutiny Panel had examined and approved measures which enable members to guard against abuses of the contract letting procedures and to address performance and financial aspects of the Council's contracts.

At their meeting on 11th January 2008, the Constitution Working Group was advised of the progress made. Discussion ensued in which Members suggested that the Panel should be appointed on an annual basis as with other committees and forums to ensure a consistent arrangement was in place. Members considered that a committee should be established to deal with procurement and contract matters which would include the packaging of contracts. The Chief Solicitor had highlighted to Members that the exercise of letting contracts was an Executive function and this must be recognised within any role given to the Panel. Whilst Members acknowledged this, it was

suggested that Executive and non-Executive Members should work together on the process from the early stage of packaging to awarding contracts. It was suggested that Cabinet Members be invited to a future meeting of the Constitution Working Group to discuss this with a view to formalising an action plan to move this issue forward.

Arising from the reference to the packaging of contracts the Chief Solicitor considered that it was relevant to note that 'packaging' of contracts could involve either:-

- the bringing together of projects to be let together which may have the effect of involving EU procedures which otherwise would not apply, but which could achieve greater economic benefits by the increased scale of the contract. or
- the disaggregation of a project into ingredient parts.

Either process could impact on the attractiveness of a contract package to contractors – interesting either local contractors or contractors from wider afield. However, it must always be recognised that contracts must be packaged appropriately; in accordance with EU procurement rules (where relevant) and follow the Council's Procedure Rules and Guidance on procurement. Contracts should never be packaged in order to avoid particular contract limits or to reduce the potential for fair and open competition.

Members discussed the background to the meeting and reiterated concerns in relation to the current role of the Panel. It was highlighted that the Finance Portfolio Holder had recently considered a report on the 'Procurement Strategy 2007 – 2010' which had addressed some of Members' concerns. It was considered, however, that the concerns which had been highlighted, in relation to 'closing the loop', still needed to be addressed. The Executive/Non Executive split of responsibilities was clarified by the Chief Solicitor.

Concerns regarding difficulties arising from there being no consistency in the membership of the Contract Scrutiny Panel were reiterated. Discussion followed on monitoring of the performance of contractors and the role of the Procurement Team. It was accepted by the Chief Solicitor that there was currently no Member input into that process and perhaps, therefore, that issue needed to be given further consideration.

As a result of the discussion and the concerns expressed by Members, it was recommended that:-

- (i) that the Contract Scrutiny Panel be appointed on an annual basis as with other committees and forums to ensure a consistent arrangement is in place. The membership of the Panel to include Executive and Non Executive Members

- (ii) That the Panel is involved in the monitoring of contract performance – it was considered that this would be best achieved by the Panel selecting a number of contracts to examine as part of its work programme. It was recognised that Members did not need to be involved in technical aspects associated with the award of contracts. Difficulties arising from Executive members being involved in the monitoring of contracts were highlighted.

Discussion followed on the compilation of Select Contractor Lists and the process followed in the event that a Contractor is 'removed' from the List. It was noted that Select Contractor Lists were submitted to the appropriate Portfolio Holder on a periodic basis. There did not appear to be provision, within the Contract Procedure Rules, in relation to process adopted in the event that a contractor is 'removed' from Lists.

RECOMMENDED – That a further report be submitted to the Working Group which includes models to address the concerns expressed by the Working Group and to achieve the recommendations set out at (i) and (ii) above.

42. ANY OTHER BUSINESS – REPORT FORMATS

The Chairman expressed concern that when Officers were preparing reports, there is not always reference made to who has written the report. In response to the concerns expressed by the Chairman, it was highlighted that the corporate report format included reference to a 'contact officer'.

CHAIRMAN