

CONSTITUTION COMMITTEE AGENDA



4 October 2012

at 9.30 am

in Committee Room A, Civic Centre, Hartlepool

MEMBERS: CONSTITUTION COMMITTEE:

The Mayor, Stuart Drummond

Councillors C Akers-Belcher, S Akers-Belcher, Cook, Cranney, James, G Lilley, Simmons and Wells.

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
 - 3.1 Minutes of the meeting held on 24 August 2012
- 4. ITEMS REQUIRING DECISION**
 - 4.1 Proposed Amendments to Contract Procedure Rules – *Assistant Director (Resources) and Chief Solicitor*
 - 4.2 Council Procedure Rules – Rule 17 Voting – *Chief Solicitor*
 - 4.3 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012– *Chief Solicitor*
 - 4.4 Job Evaluation Appeals – *Acting Chief Executive*
- 5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

CONSTITUTION COMMITTEE

MINUTES AND DECISION RECORD

24 August 2012

The meeting commenced at 9.30 am in the Civic Centre, Hartlepool

Present:

Councillor: Stephen Akers-Belcher (In the Chair)

Councillors: Christopher Akers-Belcher, Stephen Akers-Belcher, Rob Cook, Kevin Cranney, Marjorie James, Chris Simmons and Ray Wells

Officers: Peter Devlin, Chief Solicitor
Angela Armstrong, Principal Democratic Services Officer

14. Apologies for Absence

Apologies for absence were received from The Mayor, Stuart Drummond and Councillor Geoff Lilley.

15. Declarations of interest by Members

None.

16. Confirmation of the following minutes 12 July 2012

Confirmed.

17. Licensing Committee (*Chief Solicitor*

Following a request by Members at the Constitution Committee on 14 June 2012, the Chief Solicitor presented a report which provided the background to the introduction of the Licensing Committee, including the Licensing Act Sub-Committees. It was noted that whilst the Council's Constitution provided for the use of substitutions, the Licensing Act 2003 drew a specific distinction in its composition through its statutory nature indicating that a sub-committee must originate from the 'parent' committee which clearly operated in a 'quasi judicial' setting.

Members were informed that on 13 July 2012 the views of the Chair and Vice Chair of the Licensing Committee had been sought on this issue. Both accepted the position and felt that as a way forward, a possible departure from the political balance requirements should be canvassed at future 'Round Table' discussions. It was considered that this may allow for a

broader representation of Members on the Licensing Committee and in consequence, its sub-committees.

Decision

Members noted the report.

18. Council Procedure Rules – Rule 17 Voting (*Chief Solicitor*)

The Chief Solicitor presented a report which provided the background to the current system of recording votes at meetings of Council.

A lengthy discussion and debate took place around the benefits and drawbacks of undertaking recorded votes for every matter considered by Council, including any proposed amendments to proposals. Whilst Members were keen to see the continuation of open government and decision making as well as the public accountability of all Members, it was considered that the current recorded voting system should be reviewed.

A number of alternative systems and ways of recording how Members' voted were discussed and Members were keen to explore the use of an electronic voting system. It was noted that there may be electronic voting systems already in use within the local authority and community and voluntary sector which may be available to be utilised for meetings of Council. The Chief Solicitor indicated that a report could be submitted to the next meeting of the Constitution Committee outlining any costs associated with implementing an electronic voting system, whether there were any systems in-house or via the community and voluntary sector that would be suitable to use within the Council Chamber and whether any training on the use of the system would be required. It was suggested that the Constitution Committee could undertake a trial of any systems identified. The report would also include a review of Rule 17 including all voting mechanisms.

It was suggested that where officer appointments required the approval of Council, these should be progressed by the Chair of Council asking Members if there was any dissent to the proposed appointment. Should no dissent to the proposed appointment be shown, all Members present would be recorded as in favour of the appointment. Where any dissent to the appointment was shown, this could either be noted through a show of hands or a recorded vote depending on the appointment.

The Chief Solicitor sought clarification on whether Members wished to retain the option for the Chair of Council to request a ballot if required. Members acknowledged that ballots were only requested in exceptional circumstances and as such, this option should remain available to the Chair of Council.

During the discussions, Members agreed they did not want to continue undertaking recorded votes on amendments to proposals at Council meetings.

Decision

- (i) That a report be brought to the next meeting incorporating the suggested amendments to Rule 17 in relation to voting mechanisms.
- (ii) That a report be submitted to the next meeting of Constitution Committee exploring the feasibility and costings of the implementation of an electronic voting system for meetings of Council with a view to a possible demonstration of a system.

19. Consultation on Code of Independence for Local Government (*Chief Solicitor*)

The report provided the background to the draft Code for Central and Local Government. An illustrative draft Code was attached at Appendix 1. The draft Code included various 'Articles' and these were listed within the report. The Chief Solicitor highlighted the response from the Association of North East Councils on the draft Code.

Members were sceptical about the intention of Central Government in providing local control and independence to local authorities, especially in view of the current economic climate and ongoing budgetary cuts being faced by all local authorities.

In view of the implications of the draft Code, Members requested that this report be forwarded to political group leaders and subsequently to Council to ensure a full debate prior to a Council response being collated.

Decision

That the report be forwarded to political group leaders and subsequently Council for full debate prior to a Council response being collated.

20. Job Evaluation Appeals (*Acting Chief Executive*)

The report provided additional information in relation to Job Evaluation appeals. Members referred to their request for further information in relation to the lack of opportunity for the involvement of Elected Members in job evaluation appeals (Constitution Committee, 12 July 2012 minute 13 refers). Members were disappointed that this report did not include the specific information they had requested in relation to Members involvement in job evaluation appeals requested.

Members reiterated their concerns that there was no mechanism in place to

enable employees to further progress their appeal should they not be satisfied with the outcome of the job evaluation appeal. There was disappointment expressed by Members at the lack of Member involvement in the consideration of job evaluation appeals and had suggested that appeals should be referred to the General Purposes (Appeals and Staffing) Committee.

The Chair expressed his discontent that the consideration of this issue had to be delayed to enable the information requested by Members to be presented. It was suggested that a report should be submitted to the General Purposes Committee on 3 September 2012 with a view to subsequently submitting a report to Council on 13 September 2012.

The Chief Solicitor referred to the forthcoming referendum and possibility of a change in the governance arrangements when the reporting arrangements may change. However, Members were keen to see this issue progressed expediently to ensure equality and fairness throughout the whole job evaluation process.

As a result of the discussions, the Committee agreed that the Chair should contact the Acting Chief Executive to pass on Members' concerns at the way this issue was being dealt with and discuss a way forward.

Decision

- (i) That the Chair contact the Acting Chief Executive and pass on Members' concerns and discuss a way forward of progressing this issue.
- (ii) That, with the agreement of the Chair of the General Purposes Committee, a report be submitted to the Committee on 3 September 2012 to enable Members to consider this issue and formulate a report to Council on 13 September 2012 to enable a full discussion and debate.

21. Any Other Items which the Chairman Considers are Urgent

The Chairman ruled that the following items of business should be considered by the Committee as a matter of urgency in accordance with the provisions of Section 100(B) (4)(b) of the Local Government Act 1972 in order that the matter could be dealt with without delay.

Minute 22 – Notice of Referendum

22. Any Other Business – Notice of Referendum (*Chief Solicitor*)

The Chief Solicitor informed Members that the Notice of Referendum would be published in the Hartlepool Mail produced today. In addition to this an article would be included in the Council's Hartbeat magazine and further publication would be undertaken through local radio and other sources.

Decision

The publication of the Notice of Referendum was noted.

The meeting concluded at 10.38 am

CHAIR

CONSTITUTION COMMITTEE

4th October 2012



Report of: Assistant Director (Resources) and Chief Solicitor

Subject: PROPOSED AMENDMENTS TO CONTRACT PROCEDURE RULES

1. PURPOSE OF THE REPORT

- 1.1 To seek Constitution Committee's views and endorsement of proposed changes to the Contract Procedure Rules (CPR's) and subsequent submission of those changes to Council for approval and implementation
- 1.2 To clarify a number of procurement procedural issues raised by the Audit Committee.

2. BACKGROUND

- 2.1 There have been a number of recent changes, constitutionally, statutorily and in relation to new technology, which have impacted on the Council's procurement processes and practices and which have necessitated a review of the Council's Contract Procedure Rules (CPR's). Following this review it has become apparent that a number of changes are required to ensure that the CPR's accurately reflect these new and amended requirements.
- 2.2 To be more specific, details of these recent changes are described below:
 - i) Removal of the Contract Scrutiny Committee and the creation of a Sub-Committee of the Audit Committee
 - ii) Introduction of the Public Services (Social Value) Act 2012
 - iii) A variety of changes in the use of technology in procurement processes
 - iv) The implementation of the "Right to Challenge" element of the Localism Act.
- 2.3 The Audit Committee at its meeting on 20th July 2012 considered a report outlining the potential changes and endorsed the proposals for

onward submission to the Constitution Committee. There were also a number of procurement procedural issues raised at the meeting that the Chair felt could be clarified together with the Contract Procedure Rule amendments at your Committee.

- 2.4 The proposed changes are detailed in **Appendix 1** and summarised in the following sections.

3. INTRODUCTION OF THE AUDIT SUB-COMMITTEE

- 3.1 The role and remit of the Audit Sub-Committee has been agreed by the Audit Committee at its 14 June 2012 meeting. The Sub-Committee is made up of three Members and has the responsibility of:

- i) Receiving and examining tender lists
- ii) Opening and recording tenders
- iii) Periodically reviewing its effectiveness and reporting its findings to the Audit Committee

- 3.2 The former Contract Scrutiny Committee, is referred to on a significant number of occasions in the CPR's and as a result, all of these references require correcting in the document.

- 3.3 In addition to correcting the above invalid references, a number of elements have been added to the CPR's which relate to the implementation of e-procurement. Whilst the practicalities of these are described later in this report, there are a number of issues where the Audit Sub-Committee has a direct role to play in the e-procurement process. These are described in the following paragraphs:

- i) **Opening of e-tenders** – It is proposed that a change be made to the process of opening tenders to accommodate the new Sub-Committee and the corporate adoption of e-procurement processes.

The proposed opening process entails e-tenders being opened in the presence of the following:

A representative of the Corporate Procurement Team
A representative of the Service area involved in the procurement
The Chair of the Audit Sub-Committee or a nominee of the Chair, at the Chair's discretion

This is a similar process to that being operated by the vast majority of public authorities.

Following this opening it is proposed that a report detailing the outcome of the tender opening be compiled and presented to

the Audit Sub-Committee for formal receipt and recording in line with its remit.

- ii) **Opening of written tenders** – Although now in the minority, there are some occasions where an e-tender is not a suitable process and a traditional non-electronic process is required.

In such circumstances, it is proposed that the Audit Sub-Committee take responsibility for the manual opening process (supported by Council officers) in line with its remit.

- iii) **Management of e-auctions** – An E-auction is an electronic procurement process which seeks to maximise value for money through creating an ‘event’ or ‘auction’ lasting a period of time at which Bidders are encouraged to submit increasingly low prices in order to win ‘lots’. Due to the dynamic nature of this process, it is potentially problematic to apply the e-tender opening process (described at i) above, given the demands this can make on Audit Sub-Committee Members’ time.

In order to address this, the following process is proposed:

- The Audit Sub-Committee will be advised of the e-auction event dates and times and arrangements made to accommodate any or all Members of the Sub-Committee at the live auction event.
- At an Audit Sub-Committee meeting in advance of the e-auction event, a report will be presented to the Sub-Committee which explains the structure of the e-auction event and the evaluation criteria which will be implemented.
- Following the e-auction event, a summary report will be compiled and presented at the next meeting of the Audit Sub-Committee to ensure the Sub-Committee formally receive and record the outcome of the e auction process.

4. INTRODUCTION OF THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012 AND THE LOCALISM ACT 2011 – COMMUNITY RIGHT TO CHALLENGE

4.1 The Public Services (Social Value) Act

This Act places a number of statutory obligations on the Council, in relation to certain elements of its procurement practices.

The Act applies to all contracts for services and framework agreements to which the Public Contracts Regulations 2006 (‘the Regulations’) apply, but not call-offs under those frameworks. In real terms this means that the Act only applies to services contracts with a value in excess of the current EU Public Procurement thresholds (currently £173,934 excl. VAT).

The Act does not apply to below threshold contracts or any works or supplies contracts. However, it is likely that ‘mixed’ contracts involving services will be subject to similar analysis as is currently undertaken in terms of the dominant value test.

As the Act covered service contracts as defined in the Regulations the duty appears to extend to Part B service contracts since these service contracts are covered by the Regulations albeit the requirements for the procurement of such contracts are less onerous.

The Act also includes an amendment to section 17 of the Local Government Act 1988 (exclusion of non-commercial considerations in the case of local and other public authority contracts) which basically enables the Council to consider non-commercial matters when awarding business, provided this is done in pursuit of the duties imposed by the Public Services (Social Value) Act 2012.

4.2 The obligations placed on the Council in respect of the procurement activities identified above are that Council’s must consider the following when they ‘propose to procure or make arrangement for procuring services:

- How what is being proposed to be procured might improve the economic, social and environmental wellbeing of the relevant area (and this is the Authority’s own area (or combined areas if it is a joint procurement) in which it ‘primarily exercised its functions’)
- How, in conducting the procurement process, it might act with a view to securing that improvement (although the Act makes it clear, in order to remain inline with EU law, that anything under this limb must be relevant and proportionate in respect of the proposed contract);
- Whether they need to undertake any consultation about the two limbs of the duty as set out above.

4.3 Unfortunately there is currently no universal definition of ‘social value’ but Social Enterprise UK defines it as follows:

‘It involves looking beyond the price of each individual contract and looking at what the collective benefit to a community is when a public body chooses to award contract. Social value asks the question: ‘if £1 is spent on the delivery of services, can that same £1 be used, to also produce a wider benefit to the community.’

In other words, what are the additional benefits to the community, be they social, economic or environmental, which can come from this procurement process over and above the direct purchasing of the services?

In their ‘Public Services (Social Value) 2012 – a brief guide’, Social Enterprise UK provide a case study by way of an example of

compliance with the Act. In this example, the London Borough of Waltham included a question in one of their tenders where they asked bidders to demonstrate how their operational model could contribute to the efficiencies and give added value to the service. The response to this question had a value of 10% of the available marks. This question gave bidders the space to set out the additional social impact of their approach, thereby allowing them to score highly on that section and satisfying the requirements of the Act.

This is a straightforward example and similar to questions the Corporate Procurement Team include in some of their tenders already. On that basis, compliance with the Act should not be unduly difficult.

4.4 In terms of the CPR's it is proposed that a new section be included which outlines the Council's approach to addressing the requirements of the Act. This proposed section would include the following:

- i) Reference to the Council's Key Social Values, as described in the Community Strategy
- ii) Confirmation that the Council will consider the issues outlined in the Act (see 4.2)
- iii) Confirmation that, where appropriate, procurement processes will include the facility to score added 'Social Value' as part of the evaluation criteria.

4.5 **Localism Act 2011 – Community Right to Challenge**

This Act brings with it a whole raft of legislation, but the proposed CPR changes in this document relate solely to the Community Right to Challenge part of the Act.

Briefly, this element of the Localism Act enables a 'relevant body' to make an expression of interest to a relevant authority (including the Council) to take over the running of relevant services. Relevant bodies as set out in the statutory guidance include voluntary and community bodies, charities, parish councils, two or more staff of the authority concerned and any other person or body specified by the Secretary of State by regulations.

The following proposed amendments are also contained in a report to Cabinet covering the introduction of the Community Right to Challenge legislation and the actions the Council needs to take to address these.

It is proposed that a new paragraph be included in the introduction of the CPR's under the heading '**Procurement Exercises undertaken as a result of a successful challenge under the Localism Act 2011**' which makes it clear that the CPR's will come into effect once a successful challenge has been made. The paragraph would also go on to emphasise the need for the Council to secure best value and to incorporate the requirements of the Public Services (Social Value) Act 2012 in any Localism related procurement activities.

Furthermore, reference would be made to the Council ensuring that evaluation and qualification criteria would not disadvantage the voluntary and third sector in competing for opportunities to run Council services.

Finally, reference would be made to the need for the Council to consider existing contractual obligations when timetabling procurement activity.

In addition to the above, it is proposed that an amendment be made to the paragraph which deals with '**The rules and an in-house provider**' to indicate that the Council's right to bring a service in-house as opposed to procuring it through a competitive procedure does not take precedence over our new obligation to competitively source a third party provider in the event of a successful challenge.

The final proposed 'Localism' related change to the CPR's relates to the '**Criteria for selection of Price/Performance and Partnering Contracts**'. It is proposed that an additional consideration point is added which introduces the issue of the Council pursuing its agenda in relation to the 3rd and Voluntary sectors when deciding its contracting strategy.

5. **CHANGES IN THE USE OF TECHNOLOGY AND OTHER PROCEDURES IN PROCUREMENT PROCESSES**

- 5.1 There are a number of additional proposed changes to the CPR's which revolve around changes in the use of technology.

Details of these changes and proposed amendments are provided below:

5.2 **The role of Officers – The Chief Officer/Officer Team**

It is proposed that an additional responsibility be added to this section of the CPR's, namely:

- To open electronic tenders

The above is not currently included and given the Council's move to electronic procurement it would be appropriate to make such a change and links with the change proposed in Paragraph 3.3 (i) of this report..

5.3 **Public Notice provisions**

It is proposed that the requirement for 28 days public notice be amended to 14 days. The rationale for this request is:

- Electronic communications and the wholesale movement of the Council to e-procurement has enabled a faster procurement process (EU procurement timescales are reduced when procurement is undertaken electronically),
- Increased availability of opportunity information to suppliers and;
- Increased speed in responding to opportunities.

In addition to these changes, there is a central government drive to reduce the time taken in procurement activities and, as we have the technology to support this, we should consider reducing our timescales in a similar manner to the EU procurement regulations (described above).

5.4 **Reference to the Government Opportunities Portal – Supply2.gov.uk**

The above mentioned Government Portal has ceased to exist. As all tenders are now advertised across the North East via the NEPO Portal there is already significant publicity given to our contract opportunities.

It is proposed that all references to 'Supply2.gov.uk' be removed from the CPR's.

5.5 **British Standards**

It is proposed that references to 'British standards' be widened, in order to accommodate organisations which have different accreditations or adopted other equivalent international standards.

5.6 **Selected Lists**

It is proposed that the minimum size of a select list should be four 'persons' where practicable as opposed to the current three. Similarly, it is proposed that a minimum of four 'persons' where practicable are invited to quote in relation to work covered by a select list as opposed to the current three.

The rationale for these proposed changes is that due to the introduction of the Quick Quotes electronic quotation gathering system, the process of quotation gathering has been improved and it is now easier for officers to generate greater competition when securing quotes.

Greater competition should provide improved pricing for the Council.

In addition, the involvement of more suppliers in select list quotations will encourage suppliers to take part in our select list arrangements, on the basis that they will have a greater opportunity to win business once on the list.

5.7 **Bribery Act 2010**

It is proposed to change the reference to the Prevention of Corruption Acts 1889 to 1916 to the Bribery Act 2012 in line with changes in legislation.

6. CLARIFICATION OF PROCUREMENT PROCEDURES

6.1 Audit Committee identified a number of issues they and the Constitution Committee would want considering in their “Governance” role

6.2 The information requested was: -

1. *Explanation of, and how, the CPRs deal with a single bidder becoming a “preferred” bidder*

6.3 When inviting bids the CPR’s require that the documented ‘Public Notice Provisions’ are complied with.

6.4 Following the placement of the necessary advertisements and completion of the period in which we await responses to the advertisements the CPR’s require that ‘not less than four persons’ are invited to tender, however, ‘if fewer than four persons have applied’, all of those applicants should be invited to tender, provided they are considered suitable. This could be a single bidder.

6.5 The term “preferred bidder” is generally defined in contracts and is therefore the common term used to describe the contractor/developer that goes forward to carry out further work on a project. This is often, as in BSF and the Millhouse Masterplan on the basis that the “preferred bidder” must produce an approved delivery plan, usually prior to a financial close on the project, after which they would become the “appointed” developer/contractor rather than the “preferred bidder”. Even if there were only one bidder on a project (eg Millhouse) they would still be called the preferred bidder once asked to progress options which would be subject to approval. If there is no ultimate approval after option appraisal/negotiations then the bidder could then be rejected (ie would no longer be the preferred bidder).

2. *Explanation of PQQ process.*

6.6 The PQQ process is most visible when the Council undertakes a two stage procurement process. Such a process consists of the issue of a PQQ, followed by a shortlisting process, with the shortlisted applicants being issued with tender documents for them to complete and return.

6.7 Use of a PQQ can also occur during a single stage tender process. In such circumstances the tender documents are issued to bidders with the tender documents incorporating PQQ ‘type’ questions. On receipt

of the tender the PQQ is evaluated and should the bidder not have passed the PQQ test the remaining elements of their tender would not be scored. The Council's PQQ has been refined over recent years in line with reviews undertaken internally, regionally and in conjunction with organisations such as on the North East Chamber of Commerce.

Tenders

- 6.8 Corporate Procurement carry out all tender activities for the Council (that is for all contracts with a value over £60k for goods and services and £100k for works). With all of these tenders one of the processes described above would be used (unless we were 'calling off' goods/services/works from a predetermined framework agreement or using a Council select list).
- 6.9 There has been a central government guidance (which does not apply to Local Government – although we will be working towards it which advises all central government departments to avoid using PQQ's for any procurement below £100k.
- 6.10 Whilst this may seem sensible it is important to consider the environment in which this requirement is intended to apply. Central Government departmental budgets are far larger than the majority of Local Authorities therefore the requirement that PQQ checks need not be carried out on contracts with a value below £100k probably affects a far smaller %age of that department's spend than would be the case for a Local Authority. Another shortcoming of this particular Central Government requirement is that it is a very blunt instrument and doesn't take account of the criticality or strategic significance of a particular contract, something which is not always reflected in its value.
- 6.11 It is important that the content of PQQs is reviewed on a continuous basis to ensure they are fair and equitable but also safeguard risks to the Council. As described below few PQQs are issued for below tender threshold works and services (i.e. below £100k and £60k)

Quotations

- 6.12 Quotations (using the Council's Quick Quotes system) are required for all contracts with a value of £2000 up to the appropriate tender level. The minimum number of quotations required is 3 (where 3 suppliers are available).
- 6.13 Clearly there is a wide gap between £2000 and £60,000. There is no specific requirement for Departmental buyers to use a PQQ at any level of quotation and it is left up to Departments to decide whether such a mechanism is required for a particular procurement exercise.
- 6.14 As alluded to above, where a contract is for a critical service where it is essential that we do everything we can to ensure continuity of supply (e.g. Social Care type contracts), Departments may well feel justified in

asking PQQ type questions to establish the financial stability and operational abilities of bidding organisations.

3. *Explanation of price/quality split in contracts.*

- 6.15 There are a variety of issues which have to be taken into account when considering the application of a price/quality formula for the evaluation of tenders/quotations.

The CPR's are silent on the issue of price/quality splits for quotations, however they do describe a number of requirements in relation to tenders, e.g. advertising requirements etc.

- 6.16 The logic behind the introduction of a price/quality split is based on the need to evaluate offers on the basis of more than just price.
- 6.17 The assessment of price is essentially straightforward, provided a true picture of costs for each bid can be developed, quality, however is far more subjective and covers the whole range of non-financial aspects of a bid. Some of the elements which come under the banner of 'quality' are listed below:
- Local economic and social benefits
 - Aesthetic & functional characteristics
 - Environmental characteristics
 - After sales service
 - Technical support, references and track record
 - Lead times
 - Power consumption
 - Quality of staff delivering service
- 6.18 In developing a contract award criteria it is vital that the client department understand what it is they wish to achieve and what is important to them in terms of decision making. One of the benefits of clients jointly developing award criteria with the corporate procurement team is that a mixture of expertise and objectivity are combined, resulting in a workable solution which makes sense to the client and the supply base and which works when it comes to evaluating offers.
- 6.19 Only rarely is evaluation criteria based solely on price. This would really only work for the procurement of commoditised, off-the-shelf type products where the only differentiator would be price.
- 6.20 Development of the evaluation criteria forms part of the process of developing a tender strategy and its accompanying documentation. As part of its approach to tendering the Council's evaluation criteria is included in the tender documentation and serves to advise bidders of which bid attributes are important to the Council and which are less so.

4. *Use of sub-contractors.*

- 6.21 The Council's standard terms and conditions for services contain a clause which relates to Contractor's permitted use of sub-contracting which reads:

'Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.'

The Council shall be entitled to:

Assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in the Public Contracts Regulations 2006); or

Transfer, assign or novate its rights and obligations where required by law.

The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.'

- 6.22 This clause provides us with the necessary power to control any activities current contractors may wish to undertake with regard to sub-contracting services they currently deliver to the Council.
- 6.23 In terms of controlling sub-contracting activities for forthcoming contracts, we are able to incorporate a requirement in our tender documentation for bidders to identify key subcontractors and the nature and value of work they would be engaged to deliver on behalf of the main contractor.
- 6.24 This facility gives us an early sight of possible sub-contractor issues, before entering into any contractual arrangement.

5. *"Dealing with "unrealistically low" bids"*

- 6.25 Procurement guidance to officers includes the following:-

"Unrealistically high or low tenders should be challenged, as they may be due to errors or misunderstandings etc. Challenging such tenders does not automatically exclude them from the process – the tender may include innovation which has resulted in a vastly different price compared with others received."

- 6.26 If it is suspected that there are unrealistic bids there are procedures in place to reject those bids.

6. *Details of the decision making process for officers in relation to identifying the appropriate procurement route.*

6.27 The diagram on the following sheet provides details of the various considerations officers make when determining the appropriate procurement route for their requirements.



7. RECOMMENDATIONS

- 7.1 That the Constitution Committee considers and comments on the proposed amendments to the Contract Procedure Rules.
- 7.2 That Constitution Committee endorse proposed changes for onward submission to Council for approval and implementation.

8. CONTACT OFFICER

- 8.1 Graham Frankland, Assistant Director (Resources)
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Tel: 01429 523211

Draft amended Contract Procedure Rules

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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, buyer of goods/services to be selected on basis of combination of price and benefits to Hartlepool residents
- Partnering – contract includes:
 - establishment of partnering team
 - pricing policy
 - open-book policy
 - savings/benefits sharing formula.

Procurement Exercises undertaken as a result of a successful challenge under the Localism Act 2011

Once a decision has been made to procure a service following acceptance of a challenge submitted under the 'Community Right to Challenge' legislation, the Council's Contract Procedure Rules come into effect.

As with all other procurement activities undertaken by the Council, the procurement procedure will be selected by assessing the value of the contract to be awarded – as described later in these rules.

Given the possible nature of the services subject to challenge, care will need to be taken to ensure that evaluation criteria are utilised which reflect the Council's obligation to secure Best Value and meet the requirements laid

down in the Public Services (Social Value) Act 2012, i.e. to consider how the procurement can promote or improve the social, economic or environmental well-being of the authority's area.

In addition, care will be taken to ensure that Third Sector and Voluntary & Community Sector organizations are not excluded from bidding for services as a result of the Council incorporating requirements which are not proportional to the value of the service and any associated risks relating to public safety, service delivery, service continuity etc.

In addition to the above, any planned procurement activity will take into account any pre-existing contractual obligations the Council may have. This may result in decisions being required on whether to extend or terminate existing contract.

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), the Council's Procurement Unit, or is a contract designated as the Council's preferred channel, such goods and services will be purchased through that contract unless the Chief Officer, following consultation with the Head of Procurement, Assistant Director (Resources), Regeneration and Neighbourhoods Department considers a special exemption can be made. Goods or services for which the Council has accepted a tender submitted to NEPO or the Council's Procurement Unit or, where they can be secured through a contract which has been designated as the Council's preferred channel, are outside the scope of the Contract Procedure Rules and will be obtained from the relevant supplier in accordance with the applicable procedures.

Select Lists

Where goods, services or works are to be acquired of a nature in respect of which a select list has been established or adopted by the Council, such goods, services or works will be purchased through that arrangement unless the Chief Officer, following consultation with the Head of Procurement, Assistant Director (Resources), Regeneration and Neighbourhoods Department considers a special exemption can be made. Goods or services for which the Council has accepted a tender submitted via a Select list are outside the scope of the Contract Procedure Rules and will be obtained from the relevant supplier in accordance with the procedures defined for using the Select List.

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, Assistant Director (Resources), Regeneration and

Neighbourhoods Department 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 - provided that the service is not subject to a challenge under the 'Community Right to Challenge' legislation.

Should such a challenge exist, contracts will not be awarded until the outcome, either successful or unsuccessful of the challenge has been ascertained.

. 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 these informal/quotation/tender 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
- In the event of the contract arising as a result of a successful challenge under 'Community Right to Challenge' legislation the Council will consider its obligations and stated preferences in relation to delivery of services and the opportunities the contract may provide to support and develop the 3rd and Voluntary sectors in the locality.

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 provided 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 Audit Committee (through a Sub-Committee)

In order to ensure probity and transparency in the award of contracts, the Audit Committee 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 Committee 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
- To open electronic tenders

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 a sub-Committee of the Council's Audit Committee 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 Council's 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, Assistant Director (Resources), Regeneration and Neighbourhoods, is subject to these Rules.

E-tenders will be opened in the presence of the following:

- _____ A representative of the Corporate Procurement Team
- _____ A representative of the Service area involved in the procurement
- _____ The chair of the Audit Committee Sub-Committee or a nominee of the chair, at the chair's discretion

Following the opening a report detailing the outcome of the tender opening will be compiled and presented to Audit Committee Sub-Committee.

The Public Services (Social Value) Act 2012

The Public Services (Social Value) Act places a number of statutory obligations on the Council, in relation to certain elements of its procurement practices.

The Act applies to all contracts for services and framework agreements to which the Public Contracts Regulations 2006 ('the Regulations') apply, but not call-offs under those frameworks. In real terms this means that the Act only applies to services contracts with a value in excess of the current EU Public Procurement thresholds (currently £173,934 excl. VAT).

The Act does not apply to below threshold contracts or any works or supplies contracts. However, it is likely that 'mixed' contracts involving services will be subject to similar analysis as is currently undertaken in terms of the dominant value test.

As the Act covered service contracts as defined in the Regulations the duty appears to extend to Part B service contracts since these service contracts are covered by the Regulations albeit the requirements for the procurement of such contracts are less onerous.

The Act also includes an amendment to section 17 of the Local Government Act 1988 (exclusion of non-commercial considerations in the case of local and other public authority contracts) which basically enables the Council to consider non-commercial matters when awarding business, provided this is done in pursuit of the duties imposed by the Public Services (Social Value) Act 2012.

The Council confirms that it will consider the following when proposing to procure or make arrangements for procuring services and will ensure that the Council's Key Social Values, as described in the Community Strategy, are taken into account:

- How what is being proposed to be procured might improve the economic, social and environmental wellbeing of the relevant area (and this is the Authority's own area (or combined areas if it is a joint procurement) in which it 'primarily exercised its functions')
- How, in conducting the procurement process, it might act with a view to securing that improvement (although the Act makes it clear, in order to remain inline with EU law, that anything under this limb much be relevant and proportionate in respect of the proposed contract);
- Whether they need to undertake any consultation about the two limbs of the duty as set out above.

Where appropriate, tender documentation will include a reference to the Act and will provide the opportunity for bidders to propose the delivery of 'Social Value' as part of their submission with such proposals being considered and scored as part of the tender evaluation process.

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 Audit Committee 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 Audit Committee 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 Commissioning and 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 Construction line procedure formulated by or on behalf of the Department of Business, Innovation and Skills.
- ii) The list shall include a minimum of four persons, wherever practicable two of which should be local to Hartlepool wherever possible 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 Health and Safety and Well Being Manager or Chief Executive's nominee is satisfied that they have adequate Health and Safety arrangements and the Chief Finance 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,

- and in one or more newspapers or journals circulating among such persons as undertake contracts of the specified values or amounts or categories.
- 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 Audit Committee.

PART C - INFORMAL / QUOTATION PROCEDURES

NOTE: All quotations referred to in sections 3 and 4 below are to be sought from pre-determined frameworks, where such arrangements exist. Where such arrangements do not exist, a minimum of two local suppliers (where available) must be invited to submit a quotation.

3 Informal Procedure - Contracts under £2,000

For a contract for less than £2,000, reasonable enquiries shall be made to determine that the price is fair and reasonable.

4 Formal Quotations Procedure – Works contracts £2,000 - £100,000 Goods materials or Services Contracts £2,000 - £60,000 (In-house bid contracts £2,000 - £100,000)

In respect of contracts:

- ~ for the execution of work over £2,000 and up to £100,000 (for In-house bid contracts see Introduction to these Contract Procedure Rules): or
- for the supply of goods materials or services over £2000 and up to £60,000 (£100,000 for In-house bid contracts)

at least three documented quotations shall wherever possible be obtained. All quotations are to be secured using the Council's prescribed system and process of quotation gathering, specific details

of which are provided in the Council document 'Officer's Guide to Procurement'.

PART D - BEST PRICE PROCEDURES

5 Works contracts over £100,000 Goods materials or Services Contracts over £60,000 (In-house bid contracts over £100,000)

- i) Except for contracts described in Rule 5(ii), no contracts which exceed £100,000 in value or amount for the execution of any work, or £60,000 (£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 Rule6).
- ii) Rule 5(i) does not apply to contracts which have been determined should be let under the Selected Tenderer provisions (see Rule7) 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.

6 Public Notice provisions

- i) At least fourteen days public notice shall be given
- in one or more local newspapers circulating in the district, and/or
 - on the procurement pages of the Council's website, and/or
 - on the Council's chosen procurement portal

and

- also, wherever the value or amount of the contract exceeds £100,000 in the case of execution of any works or exceeds £60,000 in the case of supply of goods, materials or services, and where deemed appropriate, in one or more newspapers or journals circulating among such persons as undertake such contracts,

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.

- 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.

7. 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.

8 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 approval of the relevant Executive Member and the reason for acceptance being recorded and notified to the Audit Committee at their next available meeting.

PART E - PRICE/PERFORMANCE CONTRACTS

9. 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 public notice requesting expressions of interest from contractors must given in accordance with the Public Notice provisions (see Rule 6).
- 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 6 ii) and shall compile a list of those contractors for examination by the Audit Committee.
- 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 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 13) shall be applied to calculate the Price/performance Score of each contractor.

- 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 which shall be submitted to the Audit Committee 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 Audit Committee to which the Price/performance Score Matrix has been submitted.

PART F - PARTNERING CONTRACTS

10. 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 public notice requesting expressions of interest from contractors must given in accordance with the Public Notice provisions (see Rule 6).
 - 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 Audit Committee.

- 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 Audit Committee 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.

G - GENERAL PROVISIONS

11. Opening of tenders

- i) **Tenders must be issued with a Friday return day and a submission deadline of 12 noon.**

Written tenders shall be opened at one time and only in the presence of: -

- the Audit Sub-Committee; and
- the Chief Executive or an official of the Council designated by him/her.

ii) Electronic tenders shall be opened at one time and only in the presence of: -

- A representative of the Corporate Procurement Team
- A representative of the Service area involved in the procurement
- The chair of the Audit Committee Sub-Committee or a nominee of the chair, at the chair's discretion

iii) Paragraph (i) and (ii) of this Order shall not apply to tenders obtained for 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, Assistant Director (Resources), Regeneration and Neighbourhoods Department and the relevant Head of Service or their nominated Officers.

iv) Paragraph (i) and (ii) of this Order shall not apply to tenders which are received through the execution of an e-auction. In such an event, the following will take place:

- a) The Chair of the Audit Committee Sub-Committee will be advised of the e-auction event dates and times and arrangements made to accommodate any or all members of the Sub-Committee at the live auction event.
- b) At an Audit Committee Sub-Committee meeting in advance of the e-auction event, a report will be presented to the Sub-Committee which explains the structure of the e-auction event and the evaluation criteria which will be implemented.
- c) Following the e-auction event, a summary report will be compiled and presented at the next meeting of the Audit Committee Sub-Committee to ensure the Sub-Committee are informed of the outcome of the e-auction process.

12 Tenders to be returned in sealed envelopes (except in the event of the Council's approved e-procurement system being used)

- 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 Contract Scrutiny Committee or shall be tabled by the Chief Executive at the Audit Committee meeting at which they are under consideration;
- (b) No information shall be included in such schedule or given to the Committee by which any tenderer may be identified.

13. 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 Head of Audit and Governance, 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.

14 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, shall be the subject of a Council purchase order or quotation 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 5) the contract must be the subject of a formal written contract signed in accordance with Rule 20.

15 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.

16 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.

17 British Standards –

Where an appropriate British or International Standards Specification or British or International 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.

18 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 Bribery Act 2010 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 under mentioned 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 Vetting and Signature of contracts

Contract Vetting

- i) Contracts which are subject to the requirements of Part D – BEST PRICE PROCEDURES are to be referred to the Corporate Procurement Unit for vetting.
- ii) The Corporate Procurement Unit must refer all contracts which are subject to the requirements of Part D – BEST PRICE PROCEDURES and which incorporate additional terms and conditions to those contained in the Council's approved standard contractual documentation to the Council's Legal Services Department for vetting.

Contract Signature

- 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 Soliditor or the Chief Finance Officer or
 - executed under the Council's seal (to be affixed in the presence of the Chief Solicitor (or in his/her absence, some other person authorised by him/her)).

21 Tenderers withdrawal

In the event of any person or firm withdrawing a tender, or dedining 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 Finance 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 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 Finance 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 9) nor within the context of a project undertaken under the Partnering Contracts provisions (Rule 10).

- 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 Audit Committee.
- 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 Audit Committee 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 Audit Committee.

- 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 paragraphs (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 Audit Committee and the Chief Executive and the Chief Finance 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

“Public Services (Social Value) Act 2012” is an Act which places a number of statutory obligations on the Council, in relation to certain elements of its procurement practices, specifically to consider:

- How what is being proposed to be procured might improve the economic, social and environmental wellbeing of the relevant area (and this is the Authority’s own area (or combined areas if it is a joint procurement) in which it ‘primarily exercised its functions’)
- How, in conducting the procurement process, it might act with a view to securing that improvement (although the Act makes it clear, in order to remain inline with EU law, that anything under this limb must be relevant and proportionate in respect of the proposed contract);
- Whether they need to undertake any consultation about the two limbs of the duty as set out above.

“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.

CONSTITUTION COMMITTEE

4th October 2012



Report of: Chief Solicitor

Subject: COUNCIL PROCEDURE RULES – RULE 17
VOTING

1. PURPOSE OF REPORT

- 1.1 To consider further revisions to the existing Council Procedure Rule 17, following discussion at the Committee meeting held on 24th August, 2012. Additionally, the Committee requested information (with costings) on systems of electronic voting and a possible demonstration of available technology. That information is appended as an annex to this report. This report replicates some of the detail presented to Members previously and the Committee is reminded that under Council Procedure Rule 24.2, when there is any amendment to those procedure rules, on being proposed and seconded, those amendments would stand adjourned to the next ordinary meeting of Council.

2. BACKGROUND

- 2.1 For the Borough Council and other 'principal authorities', the actual method of voting is not prescribed by statute although in the case of Parish and Community Councils it prescribes formal voting as being by way of "show of hands" unless their Standing Orders/Procedure Rules provide otherwise. There has always been a convention that where appropriate, a certain proportion of Council could demand the taking of a recorded vote and this was accommodated within the Modular Constitution, as widely adopted by authorities following the introduction of the relevant provision of the Local Government Act, 2000. The Council in their Procedure Rules have similarly adopted the principle of a majority vote (Procedure Rule 17.1 refers) and where there is an equality of votes then the Chair of Council shall have a second or casting vote. In addition, (Procedure Rule 17.2 refers) "*there will be no restriction on how the Chair chooses to exercise a casting vote*".
- 2.2 In their discussions on the 24th August, 2012, the Committee agreed that certain matters, for example, an amendment to a motion, did not necessarily require a recorded vote. Similarly, unless there was a statutory requirement, certain appointments could conceivably proceed on a 'show of hands'.

Further, largely procedural matters of Council business could proceed by way of affirmation through an absence of dissent, at the discretion of the Chair. Proposed amendments to Rule 17 are therefore set out below for Members consideration and the existing text of this procedure rule is to be found below in italics.

17 VOTING

17.1 Majority

Unless the Council's Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put.

17.2 Chair's casting vote

If there are equal numbers of votes for and against, the Chair will have a second or casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote.

17.3 Ballot

A ballot shall be taken, if the Council decides, before the vote is taken on any question. The Chair will announce the numerical result of the ballot immediately the result is known.

17.4 Recorded Vote

Unless 17.3 applies, the Chair shall ensure that recorded votes are taken. The names of the Members of the Council voting for and against the motion or amendment, or abstaining from voting will be taken down in writing and entered into the minutes.

17.5 Voting on appointments

i) In a case where a single position is to be filled, the matter shall be determined according to the number of votes cast for each person nominated. If there are more than two people nominated for any position and the majority of votes cast is not in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

ii) In a case where there is more than one identical position to be filled, if there are more nominations than the number of positions to be filled, the Council shall determine to apply either one of the following processes:-

(a) that each appointments be dealt with separately, in which case rule 17.6(i) shall apply,

or

(b) that the appointment shall be dealt with together, in which case the matter shall be determined by ballot, each member being entitled to vote for the same number of nominees as there are appointments to be made. At the conclusion of the ballot, the nominees shall be ranked according to the total votes cast in their favour, there being appointed such number of the highest ranking nominees as equal the number of the appointments to be made.

3. PROPOSED AMENDMENTS TO RULE 17

17. VOTING

17.1 Majority [as now]

17.2 Chair's casting vote [as now]

New (reinstated) clause 17.3 'Show of Hands'

17.3 Show of hands

'Unless 17.5 applies, the Chair will take a vote by a show of hands, or if there is no dissent, by the affirmation of the meeting'.

Re-numbered clause 17.4 Ballot.

17.4 Ballot [text as now]

17.5 Recorded Vote [revised clause]

For Council decisions, other than where the Chair proceeds with the agreement of the meeting through a Show of Hands under Rule 17.3, *the Chair shall ensure that recorded votes are taken. The names of the Members of the Council voting for and against the motion or amendment, or abstaining from voting will be taken down in writing and entered into the minutes'.*

[ALTERNATIVE] 17.5 Recorded Vote

'Unless Rule 17.6 applies (Voting on Appointments) a recorded vote shall take place by a roll call of the Members present at the meeting. The Proper Officer of the Council shall take the vote by calling the names of Members and recording whether they voted for or against the motion or amendment thereto, or did not vote. The minutes will show whether a Member voted for or against the motion or any amendment or abstained from voting.

Revised present Rule 17.5 'Voting on Appointments' new Rule 17.6.

17.6 Voting on Appointments

'Those entitled to vote shall each vote for only one person. If there is not a majority of those voting in favour of one person, the name of the person having the least number of votes shall be struck off the list and a fresh vote shall be taken, and so on until a majority of votes is given in favour of one person.'

17.6 [ALTERNATIVE] Voting on Appointments

‘If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.’

4. RECOMMENDATION

- 4.1 For the Committee to consider and to make such recommendations to Council as the Committee deems appropriate.

5. CONTACT OFFICER

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ANNEX

Electronic Voting – Briefing Note

1 Types of electronic voting

Electronic voting systems can be roughly grouped into two categories:

- Fixed, hard-wired systems
- Wireless voting systems

There are many different solutions within each type from which to choose, so what follows is a brief overview of each.

1.1 Fixed, hard-wired systems

Fixed, hard-wired systems are made up of a voting unit that is fixed to each desk in the council chamber and as a consequence requires fixed seating. The voting unit in this system is often integrated with a microphone and sound system. Each member will be allocated a voting unit which they may need to sign into with a pin number or security card. A chairman unit is available to control the voting.

Voting can record the overall percentages of the vote as well as indicating who voted for what.

1.2 Wireless voting systems

Wireless voting systems do not require any fixed infrastructure and many are considerably cheaper than fixed, hard-wired systems.

Many wireless voting systems share common features and are generally 'plug and play'. Wireless systems have the advantage of being able to be used anywhere at any time, making them suitable for a multitude of purposes.

Of the systems reviewed for this report the following features were common among the cheapest solutions. These systems are more commonly used for corporate events and training courses.

- Software was simply a Powerpoint plugin. Presentation slides could be created as usual with questions and possible answers applied in the same way as any other slide element.
- Remote handset and receiver that could plug into the USB slot on any laptop or PC.
- A choice of question types: yes/no, multi-choice, true false, etc.
- Creation of participant lists so that each handset could be associated to a specific person. This allows us to see who voted for what.
- Results of the vote could be saved and viewed at a later date. Some saved automatically, some needed manual intervention to do this.

Top-end wireless solutions, although considerably more expensive, typically had these features:

- A pin system or card access to log into the unit
- Dedicated units with an option of voting types – yes/no/abstain and a range of possible answers

- A sound system with microphone
- A chairman's unit to controlling voting
- Dedicated software

2 Benefits of Electronic Voting

- Speed of the voting process
- The clarity of the result if shown on a large screen
- If using an identity card log-in, this can also register the Councillor at the meeting
- Named voting provides an auditable trail.

3 Disadvantages of Electronic Voting

- Cost of the initial purchase and ongoing maintenance
- The resources to set up and test the integrity of the system before each meeting
- Issues around security if not using an id card / pin system
- Issues around the loss/forgetting to bring if using id cards
- The wrong button can be pushed, leading to incorrect votes being recorded
- The potential for results to be questioned/reliability of the system questioned.

4 Costs

Costs associated with electronic voting vary depending on the specific need and the type of voting system.

Costs for wireless voting varies, but the way they work and the features offered differs very little between solutions.

	System	Cost	Equipment	Training
Wireless	Eurosis	£1,690 + vat	40 keypads 1 Receiver unit Free software download	½ day on site Maximum 8 people £595
	PowerVote	£3,500 + vat	40 keypads 1 Receiver unit Free software download	2 hour on-site Maximum 5 people £400 + expenses
	Quizdom	£1,542.35 + vat	36 Keypads 1 Receiver unit Software & site licence	Free online training Free technical support
Top-end Wireless	NTE Ltd	£51,938.20* inc. training	1 control unit 34 wireless units 1 wireless access point	ICT staff training. Chairpersons training for control unit. Delegate training for voting units. Telephone & email support.
Wired	NTE Ltd	£25,720.80 inc. training	1 control unit 34 wired units Installation of system	ICT staff training. Chairpersons training for control unit. Delegate training for voting units. Telephone & email support.

Wired	Tyco Integrated Systems Entry level system	£18,000	35 delegate units 1 control unit	Training provided
	Tyco Integrated Systems Card / pin registration (scalable)	£39,000	35 delegate units 1 control unit	Training provided

* The costs of this wireless solution are higher than the wired solution from the same supplier for the following reasons: Enhanced security to prevent scanners intercepting the wireless signals; wireless electronics are more expensive to produce; batteries and charges are incorporated into the units.

It should be noted that the costs detailed above are only approximate, and in the case of wired systems a full assessment of the chamber will be required to determine the actual cost, which may be higher than quoted here.

5 Issues

Adult Education is currently using an electronic voting system. One of the issues they had was when they conducted a vote based on the questions on one slide, then moved back to a previous question on a previous slide. Moving back and forth between slides allowed the vote to be taken again, which caused inaccuracies with the results as some took the opportunity to vote again.

A second problem concerned the status of the handsets at the time of the vote. Handsets had to be associated with a vote. If the handsets were not turned on at the time of the vote, then votes were not registered. It might not be immediately obvious whether or not a handset is turned on at the start of a vote.

If the wrong button is pressed on the key pad / voting panel, then the vote will have to be re-taken.

People in the public gallery will not be able to clearly see how their elected representatives voted. Although, electronic voting is capable of displaying a list of who voted in favour / against any decision.

A councillor from Suffolk County Council was disqualified for voting twice after she had picked up a colleague's handset and voted on his behalf without him knowing. Procedures would have to be in place to prevent this from happening in Hartlepool.

6 Recommendations

Decide what electronic voting would be used for and what needs to be recorded to make the process transparent. A solution based on specific needs could then be determined.

The preferred type of voting system – fixed seating arrangement or wireless?

Whether any funding is available in the current economic environment.

If a decision to proceed is made, then further investigation should be carried out by asking representatives from the various companies to demonstrate their system and proposed solution.

CONSTITUTION COMMITTEE

4th October 2012



Report of: Chief Solicitor

Subject: THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) (MEETINGS AND ACCESS TO INFORMATION) (ENGLAND) REGULATIONS, 2012

1. PURPOSE OF REPORT

- 1.1 To inform the Committee of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations, 2012, which were laid before Parliament on the 15th August, 2012 and which came into force on the 10th September, 2012. These regulations make provisions for public access to meetings and to information relating to decisions of a local authority executive whether the same is through an individual executive member, a committee of the executive or through the delegation of a decision to an officer. In addition, the regulations have relevance to decisions made by joint committees, where they are discharging executive functions.

2. BACKGROUND

- 2.1 The Public Bodies (Admission to Meetings) Act, 1960, provide for a specific right to attend local authority meetings. The Local Government Act, 1972, extended this 'right' to local authority committees and the Local Government (Access to Information) Act, 1985, further extended this right in relation to sub committees of a local authority. This legislation, also provided for access to and the supply of agenda and reports to the public other than in those categories of 'exempt' information as prescribed under Schedule 12A of the Local Government Act, 1972, as amended thereby.
- 2.2 Through the Local Government Act, 2000, where a local authority operated 'executive arrangements', subject to the power of the Secretary of State to make regulations, it was for the local authority to decide what meetings of the executive should be open to the public. The Councils own Access to Information Procedure Rules already provides for public access to meetings of the executive, other than in cases where confidential or otherwise exempt information has application. Additionally, Council Procedure Rules provide

for a ‘public question time’ and public speaking has also become a feature of its regulatory committees. The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations, 2000, already provide that a ‘key decision’ must take place in public and discussions on items in the forward plan where a decision(s) is anticipated within 28 days, must similarly be conducted in public.

- 2.3 The Secretary of State in these present regulations has drawn upon the general principal for the public to have access to meetings and documents relating to a local authority executive and this report covers the main features of these regulations. In addition the Association of Council Secretaries & Solicitors (ACSeS) has sought the opinion of Counsel on various aspects of these regulations, which opinion is also reflected, where indicated, in this report.

3. ADMISSION TO MEETINGS OF A LOCAL AUTHORITY EXECUTIVE

- 3.1 The regulations proceed on the presumption that meetings of a local authority Executive (and their committees etc) are to be held in public unless the public are otherwise excluded where an item of business constitutes ‘confidential’ or ‘exempt’ information. These terms are more particularly defined within the Regulations as follows;

‘*Confidential information*’ means – (a) information provided to the local authority by a government department on terms (however expressed) which forbid the disclosure of the information to the public; or

(b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court.

‘*Exempt information*’ has the meaning as given by Section 100I of the Local Government Act 1972 and in Schedule 12A

- 3.2 Where the public are so excluded from a meeting or part thereof by virtue of confidential/exempt information, the local authority must at least 28 days before such a ‘private’ meeting, provide notice of intention to hold such a meeting in private and to publish the same on the local authorities website. The reasons for the meeting to be held in private, must also be prescribed within a statement. Further, at least 5 clear days before a private meeting, the local authority must publish a further notice of its intention of holding a meeting in private and to publicise the same on the authorities website. The local authority, must include within any statement details of any representations received and a statement of its response thereto, as to why the meeting is to be held in private. If compliance with this particular regulation proves to be ‘impractical’, agreement should be obtained either through the Chair of the relevant Overview Scrutiny Committee or in their absence the Chair or Vice Chair of the authority. Such agreement which would be used in cases of urgency, should also subsequently be made available with reasons, through a notice and published accordingly. These

regulations therefore apply the same procedures to public meetings, namely the provision of 5 clear days notice of a meeting, as has previously been the case. Agenda and reports for a meeting should generally be available for public inspection and a report, where applicable should be marked 'Not for Publication' where it contains confidential or otherwise exempt information. The additional requirement introduced under these regulations is that of the initial 28 days notice that a meeting is to be held in public. Counsel has advised that such notification needs to be 'sufficiently specific and detailed so that representations can properly be made to the council as to why the meeting should be held in public.' Further, the notice requires 28 'clear days', which will not include the date of the notice and the date of the meeting, but will include weekend days and public holidays. This position has now been confirmed by the Department of Communities and Local Government.

4. KEY DECISIONS

4.1 The definition behind a key decision, is as follows;

- A decision which results in the local authority incurring expenditure or the making of savings which are significant having regard to the relevant local authorities budget to the services or functions to which the decision relates; or
- The decision is significant in terms of its affect on communities living or working in an area comprising two or more Wards within the area of a local authority.

4.2 Again, such 'key decisions' must be publicised in a document (i.e. the Forward Plan) at least 28 days before a key decision is made, this document must be available for inspection by the public, at the offices of the local authority and also publicised upon the authority's website. Although, this document can contain particulars of the matter relating to a 'key decision' it should not contain any confidential or exempt information. Where the publication requirements behind a key decision are 'impractical' then there are 'general exception' and 'cases of special urgency' which can have application as presently detailed with the Council's own Constitution, but such cases should be wholly exceptional in nature.

5. RECORDING OF EXECUTIVE DECISIONS ETC

5. As soon as is reasonably practicable, a written statement of the executive decision must be produced in a record of decision, the reasons behind that decision, the details of any alternative options considered and should there be any conflict of interest, a note of any dispensation as granted. The power to grant dispensations, where there is a pecuniary or prejudicial interest, has been reserved to the Council's Standards Committee. However, in the regulations, Counsel has advised that where there is 'an actual conflict of interest as at common law' then it would be the head of paid service to allow a dispensation 'to an executive member to be consulted on a matter by an

individual (executive member or officer) where s/he has a conflict of interest'. Again, this is somewhat of a departure from accepted procedures. The requirement to record executive decisions, is applicable to meetings of Cabinet, a Committee of the Executive and individual portfolio meetings. For the avoidance of doubt, this provision now also applies where an officer has made a decision (whether a 'Key Decision' or otherwise) which is an executive decision, through delegation. Here, the onus will be on the officer concerned to produce a written statement which must include:

- A record of the decision including the date it was made;
- A record of the reasons for the decision;
- Details of any alternative options considered and rejected by the Officer when making the decision;
- A record of any conflict of interest declared by an executive member who is consulted by the Officer which related to the decision; and
- In respect of any declared conflict of interest a note of dispensation as granted.

6. ADDITIONAL RIGHTS OF ACCESS TO DOCUMENTS FOR MEMBERS OF LOCAL AUTHORITIES

6.1 Members of a local authority Overview and Scrutiny Committee are given 'additional rights' to access documents under these regulations. However, this has already been accommodated within the Council's Constitution. Such documentation should be available for inspection at least 5 clear days before the meeting except where a meeting is convened (exceptionally) at shorter notice. Information must be available for inspection, in any event, within 24 hours of the conclusion of the meeting or the decision being made, as the case may be. Documentation need not be made available for inspection if it contains confidential or exempt information. Such rights of access is in addition to any other rights a local authority member may have. As already prescribed within the Council's Constitution members of an Overview and Scrutiny Committee are entitled to a copy of any document and the executive must provide that document as soon as is reasonably practicable and in any case no later than 10 clear days after the executive receives the request. A member of an overview and scrutiny is also entitled to a copy of a document containing exempt or confidential information if that member is;

- reviewing or scrutinising that action or decision;
- is part of a review contained in any work programme of that committee or sub committee. Should the executive determine that a member of Overview and Scrutiny Committee is not entitled to such a document, it must provide a written statement setting out its reasons for that decision.

6.2 Where an executive decision has been made and has not been treated as a 'key decision' and an Overview and Scrutiny Committee are of the opinion that the decision should have been treated as a key decision, then Overview

and Scrutiny may require the executive to submit a report to Council within such reasonable periods as the Committee may specify. The executive must also report to the Local Authority all details of executive decisions taken where the making of the decision was agreed as being urgent. Again, the Council's constitutional arrangements already provide for these scenarios.

7. GENERAL PROVISIONS RELATING TO INFORMATION

- 7.1 The regulations do prescribe that there are no organisational requirements to disclose confidential information if the same would result in a breach of the obligation of confidence. The Monitoring Officer as the designated 'proper officer' is also not obliged to authorise or require the local authority to disclose to the public any document or part thereof which contains confidential information or exempt information. In other cases, there is a general right for inspection and the supply of documentation at all reasonable hours at the offices of the local authority and on the relevant local authority's website, if necessary, on the payment of a reasonable fee. Records of executive decisions should be retained for a period of at least 6 years and background papers (which should also be mentioned within the relevant report to the executive) should be retained for at least 4 years. Any person who has the custody of a document which should be available for inspection, commits an offence, if, without reasonable excuse, that person intentionally obstructs or otherwise refuses to supply such a document, or part thereof.

8. RECOMMENDATION

1. To note and discuss.

9. Contact Officer

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Chief Solicitor

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CONSTITUTION COMMITTEE

4th October 2012



Report of: Acting Chief Executive

Subject: JOB EVALUATION APPEALS

1. PURPOSE OF REPORT

At Council on 13 September 2012 consideration was given to a report on Job Evaluation Appeals submitted by the Acting Chief Executive. Council subsequently referred the report to Constitution Committee for further consideration, see attached Appendix 1.

2. RECOMMENDATION

To note and discuss.

Contact Officer

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Chief Solicitor

01429 523003

COUNCIL
13 September 2012



Report of: Chief Executive

Subject: BUSINESS REPORT (2)

3. JOB EVALUATION APPEALS

- 3.1 On 24th August, 2012, a report was submitted to the Constitution Committee at the Committee's request, providing additional information in relation to the Job Evaluation Appeals process. Subsequently, a request has been made through the Committee for that information to be shared by Council. This Business Report therefore draws from that earlier report with minor supplementary up-dating.
- 3.2 The Single Status Agreement which incorporates a revised pay and grading structure was implemented with effect from 1st April, 2007 although final agreement was not obtained until the following year. The National Job Evaluation (JE) Scheme comprised 13 factors, each with a different weighting and each factor had a number of levels which then equated to a particular number of JE points. Job Evaluations are undertaken by trained, experienced Job Analysts and the scheme is applied consistently thereby ensuring the robustness of the Council's pay and grading structure. Materially, employees have the right to appeal against the outcome of Job Evaluation in respect of their posts. A significant number of appeals have been submitted, and then determined by an Appeals Panel and ratified by the relevant Executive Member with responsibility for workforce matters and the appropriate governing body in relation to schools. It has been noted, that employees also have the right to pursue an equal pay claim before an Employment Tribunal.
- 3.3 The National Agreement at Part 4 includes the following guidance;
- "The appeal will be heard by a joint panel at authority level. The panel will consist of representatives from the recognised Trade Unions and management and/or elected Members. An Independent Person may be appointed to chair the panel".*
- 3.4 The National Agreement also indicated that any decision of the Panel should be considered as being final and that equality training was essential for all Union and employer representatives who are involved in the Job Evaluation

process. On 17th March, 2008, Cabinet considered representations received through the Trade Unions that “it is essential that the employees have trust in the appeals process and the Trade Unions welcome the acceptance of a “totally” Independent Chair for the Appeals Panel”. It was therefore determined as part of the Executive decision making, that the Appeals Panel would comprise an Independent Chair, Senior HR representation, together with senior Trade Union representation, all of whom have been trained in the Job Evaluation Scheme. The Appeals Panel have therefore operated since 1st July, 2008, with one management representative and one Trade Union official, with an Independent Chair, all of whom have been trained in the use of the scheme. Once the remaining 5 appeals arising from the implementation of the Single Status Agreement/revised pay and grading structure have been fully addressed, the composition of the Appeals Panel will change to two management representatives and two Trade Union officials (with no Independent Chair) all of whom will, again, have been trained in the use of the scheme. Exceptionally, where the Appeals Panel have a “failure to agree” the Regional Joint Secretaries will be requested to assist. If no agreement can subsequently be reached, the original match and pay band will apply. This approach is consistent with other Councils regionally.

- 3.5 The Trade Unions have previously commented as follows;

“The Trade Unions are confident that the current agreed process will resolve the majority of Job Evaluation appeals in accordance with the agreed Job Evaluation Scheme. It was the stated contention of HJTUC throughout the negotiations to maintain the independent element of a JE appeals process and in the event of a “failure to agree” this was achieved through the inclusion of referral to the Regional Joint Secretaries in accordance with the National Guidance and as inserted in Part 3 SSA (current process) and Part 2 SSA (future process). HJTUC are therefore satisfied to maintain the current process as stated within Part 2 and 3 of the agreed SSA”.

- 3.6 A further meeting was held with Trade Union representatives on 6th September, 2012 wherein there was a reaffirmation of the Trade Union position, as mentioned above. Further, it was accepted that any suggested change should only come through full and proper consultation and where there was justification for the same. The Chief Solicitor's advice is contained within the report of the Constitution Committee as dated 24th August, 2012 which notes that the current Appeals Panel operates in accordance with the terms of the National Agreement. The Chief Solicitor also made comment that any suggested change *“should be based on a clear rationale for doing so, at a suitable juncture and following appropriate consultation”.*
- 3.7 Members are asked to note the information contained within this report, the commentary provided through the Trade Unions and that of the Council's Chief Solicitor. Should Members wish to initiate any change to the Job Evaluation appeals process, then they are reminded that under the Council's Constitution any *“changes to existing policies and procedures likely to have a significant impact on service provision or the organisation of the Council”* is

the preserve of the Council's Executive. In addition, the Council could be exposed to significant risk in the absence of a clear justification for any change, adequate reasoning behind such a change, and supported through full and meaningful consultation.

RECOMMENDATION

For Members to note the content of this report.