

Meeting:	Audit & Governance Committee
Meeting date:	19 March 2015
Title of report:	Contracts and financial procedure rules
Report by:	Chief financial officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

County-wide

Purpose

To refresh the contracts and financial procedure rules within the council's constitution.

Recommendation

THAT:

- (a) the monitoring officer be instructed to update the council's contracts procedure rules as attached at appendix 1; and**
- (b) the monitoring officer be instructed to update the council's financial procedure rules as attached at appendix 2.**

Alternative Options

1. The council could continue with its current contracts procedure rules and financial procedure rules; however they would then not be compliant with current legislative requirements.

Reason for Recommendations

2. To ensure council contracts procedure rules are compliant with legislative requirements and therefore provide adequate mitigation against potential for legal challenge.

3. To ensure council financial procedure rules are up to date and provide clarity of roles, accountabilities and process in order to ensure transparency about how public resources are used and to mitigate the potential for fraud.

Key Considerations

4. The contracts procedure rules and the financial procedure rules, forming part of the council's constitution, have not been updated since December 2012.
5. The council's contracts procedure rules have been updated (copy at Appendix A) to ensure they reflect the recent changes to the EU procurement rules, enacted into English law under the Public Contract Regulations 2015 on 26th February 2015 and will enable the authority to ensure that it is fully compliant with English and EU law.
6. The council's financial procedure rules have been updated (copy at Appendix B) to align with the current chief executive's scheme of delegation, to ensure transparency regarding current operational officer authorisation limits, and to ensure alignment between the contracts and financial procedure rules.
7. Changes have been made to both sets of procedure rules to reflect the move to online procurement processes and the move away from use of 'approved supplier' lists. In addition, post titles have been updated and references to any outdated partnership or service delivery arrangements (such as the partnership with the then primary care trust, contract arrangements with Amey, or part ownership of West Mercia Supplies) have been removed. The current arrangement for delivery of the internal audit service through the South West Audit Partnership is also reflected.
8. In addition, both the revised contracts procedure rules and the financial procedure rules now recognise the need to comply with the Equalities Act 2010 and other applicable financial legislation.

Community Impact

9. Adopting the suggested amendments to the council's contract procedure rules will enable the council to deliver the requisite goods, services and works to the residents of Herefordshire whilst obtaining the best value for money for the council; in line with the authority's Commercial and Commissioning Strategy 2013-2016.
10. In addition, ensure clear and transparent processes are in place to govern how resources of the council are effectively managed supports the council's corporate plan objective to manage finances effectively and to demonstrate one of the council's values, namely to be open transparent and accountable.

Equality duty

11. Section 149 of the Equality Act 2010 imposes a duty on the local authority when exercising its public functions to have due regard to the need to:
 - a. Eliminate discrimination, harassment, victimisation

Further information on the subject of this report is available from
Rachel Horne, Commercial Officer on Tel (01432) 383729

- b. Advance equality of opportunity between persons who share a relevant protected characteristic
 - c. Foster good relations between persons who share a relevant protected characteristic and persons who do not share it
- 12. Where services are commissioned by the council the aims of the equality duty and in particular the aim of advancing equality of opportunity will almost always be relevant because commissioning is about meeting the needs of the public including people with a particular characteristic.
- 13. When the council has the need to procure services from others the requirement to have due regard needs to be taken into account alongside other relevant requirements in particular those imposed by EU procurement rules.

Financial Implications

- 14. The proposed updates to the council's contract procedure rules will enable the council to ensure that it secures the best value for money from its tendering opportunities as it requires officers who are responsible for evaluating tenders to recommend the tender which poses the most economically advantageous solution as the council's preferred bidder. This criterion enables the council to select the tender which proposes a solution which offers the greatest possible benefits in terms of both quality and value to the council.
- 15. In addition, the proposed amendments to the contract procedure rules have been conducted in conjunction with the council's financial services department to ensure that the procurement regulations are aligned with the council's financial regulations.
- 16. The proposed revisions to the financial regulations are designed to ensure that the council complies with all of the relevant financial regulations which govern the council's financial conduct and ensure that the council receives the optimal value for money from its acquisitions, asset management and disposal of assets.

Legal Implications

- 17. The updates to the contracts procedure rules will ensure that the council's internal procurement regulations reflect the changes to the EU procurement rules enacted into English law under the Public Contract Regulations 2015 on 26th February 2015, and with the Late Payment of Commercial Debts Regulations 2013. In addition, the proposed amendments will enable the council to ensure that it complies with its internal regulations whilst conducting a procurement exercise; thereby mitigating the risk of a challenge as a result of contravening the authority's internal rules.
- 18. The updates to the council's financial procedure rules ensure that they comply with the recent amendments to the Terrorism Act 2000, Crime and Society Act 2001, Money Laundering Regulations 2007 and Late Payment of Commercial Debts Regulations 2013, Public Contract Regulations 2015 and the Late Payment of Commercial Debts Regulations 2013.

19. As required by legislation, Council has adopted a constitution which sets out how we operate and how we make decisions. Audit & Governance Committee has been delegated the function of reviewing the constitution and making recommendations to Council; the monitoring officer has delegated authority to amend the constitution to reflect what Council has agreed, changes to the law and technical amendments. The amendments proposed fall into the category of technical amendments or those required as a result of changes to the law.

Risk Management

20. The proposed amendments will ensure that the council complies with internal rules in relation to procurement practices and thereby effectively mitigates the risk of challenge to a tender award.

Consultees

None.

Appendices

Appendix A - Updated contracts procedure rules

Appendix B - Updated financial procedure rules

Background Papers

None identified.