

Wiltshire Council

Council

28 February 2012

Part 11 of the Council's Constitution - Procurement and Contract Rules

Summary

To consider various amendments to Part 11 of the Council's constitution arising from:

- The risks identified and recommendations made by an internal audit review of contract administration completed in November 2011;
- The Corporate Procurement Unit's review of improvements required to the current approach to procurement across the Council; and
- Changes in the law since the last review of Part 11 of the constitution.

Proposal

Council is asked:

- a) to approve the changes to Part 11 of the Council's Constitution, as incorporated at Appendix A. The changes have been considered and are recommended by the Standards Committee;
- b) to adopt Part 11 of the Council's Constitution as so amended, with effect from 1 April 2012.

Reason for Proposal

To strengthen and improve the Council's contract and procurement governance.

Ian Gibbons
Solicitor to the Council and Monitoring Officer

Wiltshire Council

Council

28 February 2012

Part 11 of the Council's constitution - Procurement and Contract Rules

Purpose of Report

1. To consider various amendments to Part 11 of the Council's constitution arising from:
 - The risks identified and recommendations made by the internal audit review of contract administration completed in November 2011;
 - The Corporate Procurement Unit's review of improvements required to the current approach to procurement across the Council; and
 - Changes in the law since the last review of Part 11 of the constitution.

Background

2. In November 2011 the Council's internal audit team reviewed the internal controls for the Council's contract administration services, to provide assurance that they are operating adequately and effectively. Various major changes proposed to Part 11 of the constitution aim to mitigate the risks identified by this internal audit. Key recommendations included:
 - Commissioning officers should be supported with detailed procurement guidance in a "Procurement Manual" together with appropriate training;
 - Commissioning officers should use either unamended model contracts, or refer the proposed contract to Legal Services;
 - Contracts and key contract information should be stored in one central register.
3. In addition, the Corporate Procurement Unit has been reviewing the approach to procurement across the Council to identify improvements that will enable greater influence over the Council's spend and ability to deliver benefits from its procurement activity. Key to this improved approach is a change in the way procurement is planned across all service areas and the way in which procurement related decisions are governed, as set out in various changes to Part 11.

- 4 The purpose of Part 11 (Procurement and Contract Rules) is to:
- deliver Best Value;
 - manage and reduce the Council’s corporate risk;
 - ensure accountability for all procurement decisions;
 - enable procurement decisions to be taken efficiently, effectively and legally (in particular by supporting procurement decision-makers with an effective programme of training and detailed procurement guidance);
 - create a check and challenge system as a powerful and effective means of:
 - a) holding procurement decision-makers to account;
 - b) ensuring legal and process compliance; and
 - c) introducing renewed focus on delivering value for money.
 - ensure that those responsible for procurement decisions are clearly identifiable;

Main Considerations for the Council

Council is asked to consider amending Part 11 of the constitution as set out at Appendix A for the following reasons:

- 5 The Focus Group on the Review of the Constitution considered the proposals in detail on 16 January 2012.

The comments of the Focus Group were incorporated in revised Part 11 as follows:

Rule Ref.	Comment
16.10	Reasons for approval of extraordinary exemptions (i.e. extraordinary circumstances in which the Council’s procurement routes set out in Part 11 may be avoided) must be published on the Council’s intranet and communicated to the relevant Cabinet Member within 10 working days of decision, and will normally be made available to the public, except where this would not be appropriate for legal reasons
Various	Commitment to advertisement of tendered contracts via ‘BuyWiltshire’ website must remain throughout

- 6 On 25 January 2012 the Standards Committee agreed the proposed changes to Part 11, subject to the circulation of a revised draft incorporating the points raised by the Focus Group for final review and comment by members of the Focus Group and Standards Committee.
- 7 After consultation with the Corporate Procurement Unit, the Head of Legal Services responded to various comments and questions raised on the revised draft with further information and explanation. In light of these responses, the Standards Committee now recommends Council to approve and adopt the revised Part 11 as set out at Appendix A.

Environmental and climate change considerations

- 8 There are no environmental or climate change considerations for the proposal.

Equalities Impact of the Proposal

- 9 Revised Part 11 increases competition for lower value Council contracts. This supports the Council's commitment to openness and transparency in its procurement activity. There are no further equalities impact considerations for the proposal.

Risk Assessment

- 10 Revised Part 11 has been drafted to mitigate the risks identified by the internal contract administration audit. The revised Procurement and Contract Rules aim to ensure that:
 - standards are strengthened, all procurement processes are kept up to date and procurement activity in contravention of the Procurement and Contract Rules is eliminated.
 - a robust procurement manual will be available to commissioning officers, which will provide detailed guidance on how to implement the rules (see rule 1.4).
 - service directors must (in conjunction with the Corporate Procurement Unit and Legal Services) ensure that appropriate training for officers is maintained (see rule 3.7.5).
 - ultimate responsibility for procurement activity will fall on the service director whose team is commissioning the procurement contract. However for a particular proposal to progress through the system they, via their team, will have to report to the Corporate Procurement and Commissioning Board at various stages and in particular during the initial planning stage (see rules 4 and 5).

- all proposals, apart from standard form proposals, must be referred to both Legal Services and the Corporate Procurement Unit before committing the Council (see rule 3.4 and Section B of the rules). This provides a system of check and challenge within the process. All standard model contract and procurement templates are to be updated to ensure that they are fit for purpose, and a methodology will be set in place to ensure that they are regularly reviewed (see rule 8).
 - there will be a central register of contracts maintained by the Corporate Procurement Unit but monitored and checked by Legal Services. This will store copy contracts and capture key information. As well as ensuring key dates/provisions are easily identified this will allow corporate oversight of the system itself to ensure that standards are being maintained and that any short cuts to avoid the check and challenge system are quickly identified and dealt with.
- 11 If the revised Procurement and Contract Rules in Part 11 are not adopted, commissioning officers may carry out procurement activity in contravention of the Council's constitution and the law. This exposes the Council's procurement decisions to the risk of challenge.
- 12 There are no risks identified that may arise if the proposal is taken.

Financial Implications

- 13 The revised Procurement and Contract Rules in Part 11 refer to and complement the Council's Financial Regulations and Financial Procedure Rules. All procurement activity must comply with the Financial Regulations and Financial Procedure Rules (see rules 3.1 and 3.8.1). The proposal strengthens the existing process and therefore there are no additional financial implications relating to the proposal.

Legal Implications

- 14 A failure to maintain proper procurement procedure and apply the Procurement and Contract Rules at Part 11 increases the risk to the Council.

Conclusions

- 15 Accordingly, Council is asked to approve and adopt revised Part 11 as set out at Appendix A from 1 April 2012,

Ian Gibbons
Solicitor to the Council and Monitoring Officer

Report Author:
 Frank Cain
 Head of Legal Services & Deputy Monitoring Officer

The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

Appendix A - Part 11 Procurement and Contract Rules