

## **SOUTH HOLLAND DISTRICT COUNCIL**

**Report of:** Portfolio Holder for Governance and Customer

**To:** Cabinet – 15 January 2019  
Council – 23 January 2019

**(Author:** Jacqui Berridge Lawyer)

**Subject** Log of Delegation to Officers - Contracts delegations and Contract Procedure Rules

**Purpose:** To consider revised Delegations to Officers in relation to contracts and to consider proposed amendments to the Contracts Procedure Rules

### **Recommendation(s):**

- 1) That the proposed delegations to officers relating to contracts, detailed in Appendix B, be approved and the Log of Delegations be amended accordingly; and
- 2) That the proposed amendments to the Contracts Procedure Rules detailed in Appendix C be approved; and
- 3) That full Council be recommended to amend the Constitution in accordance with Appendix C.

### **1.0 BACKGROUND**

- 1.1 The Log of Delegation to Officers currently includes the delegations relating to contracts shown in Appendix A. As is set out in more detail below, there is a need to make changes to the Contract Procedure Rules in the Constitution. In addition, and to reflect amendments to the Contract Procedure Rules over recent years, the establishment of the Contracts Team, and changes in post titles, there is a need to update the current delegations to officers in respect of contract matters.
- 1.2 An amended list of officer delegations relating to contracts, as detailed in Appendix B, is therefore submitted for consideration.
- 1.3 The contracts service has recently been subject to an audit. One of the recommendations arising from that audit is that the Contract Procedure Rules be amended to show what level of officer may authorise each level of the procurement process. In the event that the proposed amended list of officer delegations detailed in Appendix B is approved, proposed amendments to the Contract Procedure Rules to comply with this audit requirement are attached at Appendix C.

## 2.0 PROPOSED AMENDED DELEGATIONS

2.1 Comparison between the existing and proposed delegations is difficult because the Contract Procedure Rules have been completely rewritten since the existing delegations were granted. The following issues are, however, highlighted:

- both sets of delegations essentially deal with the (i) tender (ii) evaluation (iii) award (iv) signing and (v) termination of contracts; and (vi) the waiving of any requirements of the Contract Procedure Rules
- tendering and evaluating - the existing delegations require the tendering of all contracts over £75,000 to be undertaken by Service Managers (SMs) and above, subject to consultation with the portfolio holder. The new delegations allow officers below SM level to undertake all parts of the tendering process, without portfolio holder consultation, but not the award and signing of contracts. This allows lower level officers to request, receive and evaluate tenders/quotations in compliance with the Contract Procedure Rules, with portfolio holder input for the award of certain contracts
- awarding contracts - in both sets of delegations, officers at SM level and above award contracts. The awarding of most contracts was previously subject to consultation with the relevant portfolio holder. It is proposed that this requirement for consultation should continue, except for (i) routine contracts (for example, routine ongoing or annual maintenance contracts, routine purchasing of goods and equipment; routine servicing of vehicles etc); (ii) contracts for 1-off schemes where the scheme itself has been formally approved and where sufficient money has been allocated within the budget for the contract; and (iii) indirect services such as legal services or consultants for schemes which have been formally approved and where sufficient money has been allocated within the budget for the contract. This should help to simplify the process.
- signing contracts - in both sets of delegations, officers at SM level and above sign contracts. In the new delegations the Contracts and Procurement Manager has been added as a signatory
- in both sets of delegations officers at SM level and above may enter into post tender negotiations
- terminating contracts - in both sets of delegations officers at SM level and above may terminate any contract where there is lawful cause (in the new delegations this is subject to consultation with the Monitoring Officer and s151 Officer)
- the proposed delegations continue to ensure that no officer delegations are actioned unless the funding for the proposed contract has been included within the approved budget. As some contracts extend beyond the current financial year, this includes the approved 5 year capital programme
- waiving any Procedure Rule requirements - in the existing Rules any exemptions to the Rules were authorised by the Chief Executive or Director following consultation with the Monitoring Officer and appropriate portfolio holder (or Leader or Deputy Leader in his/her absence). This is not referred to in the existing Log of Delegation. In the proposed delegations the Chief Executive, Chief Officers and Deputy Chief Officers have such authority following consultation with the MO or s151 Officer.

2.2 If the proposed amended delegations are approved, the Cabinet and full Council will continue to recommend and approve the budget/capital programme for each contract, with

officers then tendering and awarding contracts in compliance with the Contract Procedure Rules, subject to any necessary consultation with the relevant portfolio holder.

2.3 Most officer decisions must be published. However, this does not apply to routine administrative decisions and minor operational matters, or to decisions which are not closely connected to the discharge of an executive function. There is no legal definition of a minor or administrative decision, but the approach that officers adopt is to consider whether a decision would be of public interest. As such, low value contracts would likely be considered minor. Larger contracts could be of public interest and would therefore result in a decision notice. Decisions on the process such as tendering and evaluation of tenders/quotations are not closely connected with the discharge of the function and are most likely administrative and are not published as they follow the process already approved as part of the Contract Procedure Rules in the Constitution.

2.4 So in conclusion it is proposed that:

- only officers at SM level and above be given authority to enter into post tender negotiations, and to award, sign and terminate contracts
- officers at lower level be given authority to deal with all aspects of the tendering process
- portfolio holders be involved in relation to the awarding of contracts (except contracts which are routine; contracts which comprise part of a formal approval for a 1-off scheme; or indirect contracts for legal or consultancy services etc)
- only the CX, COs and DCOs be authorised to waive any requirements of the Contract Procedure Rules following consultation with the MO or S151 Officer

2.5 A need for two additional delegations has been identified in order to ensure consistency with current procedures and Contract Procedure Rules:

- The use of Standing (Approved) Lists of Contractors (Rule 8.1.2 and 8.1.3) (SMs and above)
- the disposal of obsolete assets (Rule 9.2) (SMs and above)

### 3.0 **PROPOSED AMENDMENTS TO THE CONTRACTS PROCEDURE RULES**

3.1 The proposed amendments to the Contracts Procedure Rules set out in Appendix C follow the proposed amended Log of Delegations to Officers.

### 4.0 **OPTIONS**

4.1 Cabinet can approve or decline to approve any of the delegations detailed in Appendix B and the proposed amendments to the Contract Procedure Rules set out in Appendix C.

### 5.0 **REASONS FOR RECOMMENDATION(S)**

5.1 The existing delegations detailed in Appendix A correlate with the former Contract Procedure Rules. The proposed delegations in Appendix B will, if approved, correlate with the amended Contract Procedure Rules. The proposed amendments in Appendix C will comply with audit requirements and ensure that officers are notified of the level of delegation that applies to each part of the Contracts process.

## **6.0 EXPECTED BENEFITS**

- 6.1 The proposed delegations to officers will relate more closely to the current Contract Procedure Rules. The proposed amendments to the Contracts Procedure Rules will secure compliance with the audit requirements.

## **7.0 IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

### **7.1 Constitutional & Legal**

- 7.1.1 As the award of contracts is an executive function, delegation of part of that function is reserved to the Leader and the Cabinet.
- 7.1.2 The Contract Procedure Rules relate to the contracts function and Cabinet therefore has an opportunity to consider proposed amendments to the Rules, but as the Contract Procedure Rules form part of the Constitution full Council approval is required.

### **7.2 Contracts**

- 7.2.1 The amended delegations will correlate and comply with the current Contract Procedure Rules. The proposed amendments to the Contract Procedure Rules will allow compliance with the audit requirements.

### **7.3 Risk Management**

- 7.3.1 Full compliance with the Contract Procedure Rules and the relevant Officer delegations should lower any risk of challenge to any contracting procedure.

## **8.0 WARDS/COMMUNITIES AFFECTED**

- 8.1 None

## **9.0 ACRONYMS**

- 9.1 The following acronyms, contained in Appendices A and B, apply.

- AD means Assistant Directors (now defunct - replaced by DCOs)
- CPM means the Contracts and Procurement Manager
- CX means Chief Executive
- CO means Chief Officer (currently the CX and the Shared Executive Directors)
- DCO means Deputy Chief Officer (currently the Executive Managers)
- HLM means Housing Landlord Manager (the HLM is a SM and specific reference to the HLM is therefore removed from the proposed delegations)

- SM means Service Manager
- SLO means the Senior Legal Officer (currently the Executive Manager Governance)

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Background papers:- The Log of Delegation to Officers

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**Key Decision:** N  
**Exempt Decision:** N

**This report refers to a Mandatory Service / Discretionary Service**

**Appendices attached to this report:**

Appendix A Existing delegations to officers relating to contracts  
Appendix B Proposed delegations to officers relating to contracts  
Appendix C Proposed amendments to the Contract Procedure Rules

**APPENDIX A – existing delegations to officers relating to contracts**

<b>Officer(s)</b>	<b>Subject</b>	<b>Delegation From</b>	<b>Power</b>	<b>Authorising Minute</b>
(a) CX, Directors, AD's, SM's, HLM	Contracts – Consultants (All delegations relating to contracts are subject to the scheme falling within the approved budget)	<b>Cabinet</b>	Authority to act as “Authorised Officer” to ensure that any procurement in accordance with the Procedure Rules, and that consultant’s performance is monitored (Rule 1.4).	C112/07
(b) CX, Directors, AD's, SM's, HLM	Contracts (All delegations relating to contracts are subject to the scheme falling within the approved budget)	<b>Cabinet</b>	Authority to authorise staff to place orders against Framework Agreements (Rules 3.2 and 32.1).	C112/07
(c) CX, Directors, AD's, SM's, HLM and any other officer with the approval of the CX/Director/SM	Contracts – Low Value Procurement including emergency works (All delegations relating to contracts are subject to the scheme falling within the approved budget)	<b>Cabinet</b>	<u>The seeking of written quotations</u> and the raising of purchase orders.	C112/07
(d) CX, Directors, SM's, HLM and any other officer with the approval of the CX / Director / SM	Contracts – Medium Value Procurement including emergency works (All delegations relating to contracts are subject to the scheme falling within the approved budget)	<b>Cabinet</b>	<u>The seeking of written competitive quotations</u> and the raising of purchase orders.	C112/07
(e) CX, Directors, SM's and HLM in consultation with appropriate portfolio holder	Contracts – High Value Procurement not subject to EU Regulations (All delegations relating to contracts are subject to the scheme falling within the approved budget)	<b>Cabinet</b>	(i) Authority to <u>seek tenders</u> by way of:- <ul style="list-style-type: none"> <li>· Open Competitive Tendering</li> <li>· Selective Tendering from an Approved List of Contractors</li> <li>· Selective Tendering by Advertisement for Specific Contracts</li> </ul> (ii) Serial Negotiated Contracts - Authority to <u>negotiate with contractor</u> a contract forming part of a serial programme on basis of rates and prices contained in an initial contract previously awarded competitively following an invitation to tender (iii) Single Negotiated Contract - Authority to <u>negotiate with a contractor</u> already approved on the Council's list of contractors or on the Constructionline database where considered to be in the Council's best interest (iv) Partnership - Authority to <u>enter into a longer term contract</u> with a single service provider for the supply of supplies, services or works on the principles of shared objectives, risk, resources and continuous improvement in performance (following tender)	C112/07
(f) CX, Directors, SM's, HLM in consultation with appropriate Portfolio Holder	Contracts – High Value Procurement subject to EU Regulations (All delegations relating to contracts are subject to the scheme falling within the approved budget)	<b>Cabinet</b>	Authority to <u>seek tenders</u> in accordance with Regulations under the open, restricted or negotiated procedure, as appropriate.	C112/07

(g) CX, Directors, SM's, HLM and any other officer with the approval of the CX / Director / SM	Contracts – opening of tenders	<b>Cabinet</b>	Authority to act as “Authorised Officer” for the purposes of opening of tenders (Rule 19.2)	C112/07
(h) CX, Directors, SM's, HLM in consultation with appropriate Portfolio Holder	Contracts – awarding of (All delegations relating to contracts are subject to the scheme falling within the approved budget)	<b>Cabinet</b>	Authority to <u>award any contracts</u> not dealt with under (e) above following appropriate procedure	C112/07
(i) CX, Directors, SM's, HLM and any other officer with the approval of the CX / Director, SM's	Contracts (All delegations relating to contracts are subject to the scheme falling within the approved budget)	<b>Cabinet</b>	Authority to issue letter of intent (Rule 27.1)	C112/07
(i) CX, Directors and SM's, HLM	Contracts – Miscellaneous (All delegations relating to contracts are subject to the scheme falling within the approved budget)	<b>Cabinet</b>	(i) Authority to enter into post tender negotiations (Rule 23.1) (ii) Authority to <u>sign contracts</u> where not under seal (Rule 29.1) (iii) Authority to nominate to main contractor (Rule 34.2) (iv) Authority to approve variations (Rule 34.4) (v) Authority to require performance bond or other sufficient security (Rule 34.5) (vi) Authority to extend contract in accordance with its terms (unless portfolio holder report required) (Rule 35.1) (vii) Authority to negotiate extension of contract where terms do not expressly provide for extension (Rules 35.2 and 35.3) (viii) Authority to terminate contracts (Rule 36)	C112/07
(k) CX, Directors, SM's, HLM in consultation with appropriate Portfolio Holder	Contracts – Miscellaneous (All delegations relating to contracts are subject to the scheme falling within the approved budget)	<b>Cabinet</b>	Without prejudice to the foregoing, the power to <u>enter into any contract</u> for the supply of goods, services or works.	C112/07

## APPENDIX B – proposed delegations to officers relating to contracts

Officer(s)	Subject	Delegation From	Power
CX, COs and DCOs following consultation with the MO or S151 Officer	Contracts - contracting activities of any partnership for which the Council is the accountable body	<b>Cabinet</b>	(Note to Contract Procedure Rule 1.1) Authority to agree that Contract Procedure Rules do not apply to contracting activities of any partnership for which the Council is the accountable body.
CX, COs, DCOs and SMs subject to consultation with the appropriate portfolio holder (consultation is not required for (i) routine contracts (eg routine ongoing or annual maintenance contracts, routine purchasing of goods and equipment; routine servicing of vehicles etc); (ii) contracts for 1-off schemes where the scheme has been formally approved and where sufficient money has been allocated within the budget for the contract; and (iii) indirect services such as legal services or consultants for schemes which have been formally approved and where sufficient money has been allocated within the budget for the contract.)	Contracts – letting (awarding) of contracts through framework agreement	<b>Cabinet</b>	(Contract Procedure Rules 2.1.5 and 8.2) Authority to let (award) a contract through any framework agreement to which the Council has access where considered expedient by a CO or a DCO subject to the scheme falling within the approved budget which includes the approved 5 year capital programme.  (A decision notice must be published for each award of contract unless administrative, minor or not closely connected to discharge of function.)  (The signing of contracts is dealt with separately below.)
CX, COs and DCOs following consultation with the MO or S151 Officer	Contracts - variation or waiver (exemption) of Contract Procedure Rules	<b>Cabinet</b>	(Contract Procedure Rules 3.1 and 3.2) Authority to vary or waive any Contract Procedure Rules subject to complying with all relevant requirements of Rule 3, and subject to the scheme falling within the approved budget which includes the approved 5 year capital programme.
CX, COs, DCOs and SMs	Contracts - Standing (Approved) Lists	<b>Cabinet</b>	(Contract Procedure Rules 8.1.2 and 8.1.3) Authority to determine that a Standing (Approved) List shall be kept of persons suitable for undertaking contracts for the execution of specified categories of work or for the supply of specified categories of goods, materials or services within such values or amounts as may be specified, in accordance with Contract Procedure Rule 8, and to use such Lists, subject to full compliance with Rule 8.  (The awarding and signing of contracts are dealt with separately below)
CX, COs, DCOs and SMs	Contracts - assets for disposal	<b>Cabinet</b>	(Contract Procedure Rule 9.2) Authority to dispose of obsolete stocks, stores or assets, other than land, subject to complying with Contract Procedure Rule 9.2.
CX, COs, DCOs, SMs and any other officer with the written approval of the CX/CO/DCO/SM (any sub-delegations lasting more than 6 months must be reported to the SLO)	Contracts - pre tender market testing and consultation	<b>Cabinet</b>	(Contract Procedure Rule 10.1) Authority to consult potential suppliers prior to issue of the Invitation to Tender or Request for Quotation subject to the scheme falling within the approved budget which includes the approved 5 year capital programme.
CX, COs, DCOs, SMs and any	Contracts – all	<b>Cabinet</b>	(Contract Procedure Rules 8.1.8, 8.2 (where a

other officer with the written approval of the CX/CO/DCO/SM (any sub-delegations lasting more than 6 months must be reported to the SLO)	values – seeking, receiving and evaluating quotations/tenders for contracts for works, goods materials and services, and hiring of consultants		competition is required), 9.1.3 and 9.1.4, 11.0, 12.0, 14.0, 16.1, 17.2). Authority to request and receive tenders and quotations, and to evaluate tenders and quotations subject to compliance with the Contract Procedure Rules (as amended by any authorised variation or waiver) and subject to the scheme falling within the approved budget which includes the approved 5 year capital programme.  (The awarding and the signing of contracts are dealt with separately below.)
CX, COs, DCOs and SMs following consultation with the relevant portfolio holder (consultation is not required for (i) routine contracts (eg routine ongoing or annual maintenance contracts, routine purchasing of goods and equipment; routine servicing of vehicles etc); (ii) contracts for 1-off schemes where the scheme has been formally approved and where sufficient money has been allocated within the budget for the contract; and (iii) indirect services such as legal services or consultants for schemes which have been formally approved and where sufficient money has been allocated within the budget for the contract.)	Contracts - awarding of contracts	<b>Cabinet</b>	(Contract Procedure Rules 8.2, 16.2) Authority to award contracts subject to compliance with the Contract Procedure Rules (as amended by any authorised variation) and subject to the scheme falling within the approved budget which includes the approved 5 year capital programme.  (Decision notices must be published for each award of contract unless administrative, minor or not closely connected with discharge of function.)  (The signing of contracts is dealt with separately below.)
The CPM plus the CX, COs, DCOs and SMs	Contracts – signing of contracts which are not under seal	<b>Cabinet</b>	(Contract Procedure Rule 18.2) Authority to sign contracts which are not under seal and which come within the jurisdiction of the officer concerned.  (Contracts under seal must be signed only by officers who have specific authority to do so.)
CX, COs, DCOs, SMs and any other officer with the written approval of the CX/CO/DCO/SM (any sub-delegations lasting more than 6 months must be reported to the SLO)	Contracts - refusal of hard copy tenders	<b>Cabinet</b>	(Contract Procedure Rule 14.4) Authority to refuse to accept hard copy tenders which do not comply with the Contract Procedure Rules.
Officers of the Contracts team	Contracts - Authorised Officer of relevant team	<b>Cabinet</b>	(Contract Procedure Rules 14.3.2 and 14.4) Officers appointed as "Authorised Officer of relevant team"
CX, COs, DCOs, SMs and any other officer with the written approval of the CX/CO/DCO/SM (any sub-delegations lasting more than 6 months must be reported to the SLO)	Clarification of an invitation to tender	<b>Cabinet</b>	(Contract Procedure Rule 15.1) Authority to provide clarification of an Invitation to tender
CX, COs, DCOs, SMs and CPM	Post tender negotiations	<b>Cabinet</b>	(Contract Procedure Rules 15.2 to 15.6) (at least 2 officers are required – see rule 15.6) Authority to undertake post tender negotiations
CX, COs, DCOs and SMs	Authority to terminate contracts	<b>Cabinet</b>	(Contract Procedure Rule 29) Authority to terminate contracts subject to consultation with the MO and S151 Officer

## APPENDIX C – Proposed amendments to the Contracts Procedure Rules

Rule 2.1.1 be amended to read as follows:

“Officers will comply with:

- (a) these Contract Procedure Rules (CPRs);
- (b) the Council’s Constitution;
- (c) **the Log of Delegations to Officers; and**
- (d) with all UK and EU legal requirements (including ensuring that any contractors are mandatorily excluded from participation in a procurement procedure where Regulation 57 of the Public Contracts Regulations 2015 applies).”

That, with the exception of Rules 8.2, 16.2 and 29 which are dealt with below, the following wording be added to the beginning or end (as appropriate) of any Contract Procedure Rule mentioned in the proposed Log of Delegations to Officers at Appendix B:

**“(See the Log of Delegations to Officers for details of officers who may action this Rule)”**

A new Contract Procedure Rule 5.2A be added as follows:

**“Most contracts will be awarded by officers making a decision under delegated authority (see the Log of Delegations to Officers). All such officer decisions must be published unless the decision is administrative, minor or not closely connected to the discharge of an executive function. Some decisions will be subject to Call-In. Where Call-In applies the winning contractor must not be advised of the outcome of the process until the Call-In period has expired.”**

Rule 5.6 be amended to read as follows:

**“Subject to complying with Rule 5.2A, prospective candidates must be notified simultaneously in writing and as soon as possible of any contracting decision. If a candidate requests in writing the reasons for a contracting decision, the officer must give reasons in writing within 15 days of the request.”**

Rules 8.2.4 and 8.2.5 be added as follows:

**“8.2.4 Where a Framework Agreement is used and the arrangements under that Agreement include mini competition, the Log of Delegations to Officers details which officers may seek, receive and evaluate quotations/tenders.”**

**“8.2.5 Most contracts will then be awarded by officers making a decision under delegated authority (see the Log of Delegations to Officers). All such officer decisions must be published unless the decision is administrative, minor or not closely connected to the discharge of an executive function. Some decisions will be subject to Call-In. Where Call-In applies the winning contractor must not be advised of the outcome of the process until the Call-In period has expired.”**

Rule 16.2.4 be added as follows:

**“16.2.4 Most contracts will be awarded by officers making a decision under delegated authority (see the Log of Delegations to Officers). All such officer decisions must be published unless the decision is administrative, minor or not closely connected to the discharge of an executive function. Some decisions will be subject to Call-In. Where Call-In applies the winning contractor must not be advised of the outcome of the process until the Call-In period has expired.”**

Rule 29 be added as follows:

**“29.0 TERMINATION OF CONTRACTS**

**The Log of Delegations to Officers details which officers may terminate a contract. Any termination must be strictly in accordance with the terms of the contract and subject to consultation with the Monitoring Officer and Section 151 Officer.”**