

CONSTITUTION UPDATE AND GOVERNANCE MATTERS
WDA/12/22

Recommendation

It is recommended that:

1. Members adopt the Scheme of Delegation for the 2022/23 Municipal Year, attached Appendix 1;
2. Members agree to adopt the proposed amendments to the Contract Procedural Rules, and for the final drafting of the Rules and associated procurement guidance to be finalised by the Chief Executive in consultation with the Authority Chairperson;
3. Members agree to adopt the revised Constitution accordingly.

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Report of the Monitoring Officer

1. Purpose of the Report

- 1.1 To recommend that Members adopt the Scheme of Delegation for the 202~~4~~2/~~2~~23 Municipal Year (Appendix 1).
- 1.2 To recommend that Members agree to the adoption of a revised Contracts Procedural Rules into the Constitution.
- 1.3 To agree to adopt the revised Constitution accordingly.

2. Background

- 2.1 At the commencement of a new municipal year, it is appropriate for the Constitution to be updated and adopted by the Authority. The Monitoring Officer is responsible for ensuring that the Constitution for the Authority is up to date, relevant and effective. Any proposed changes to the Constitution are subject to Member approval.
- 2.2 The Constitution comprises a set of documents which define the Authority's governance arrangements. This includes:
 - Scheme of Delegation (Article 1)
 - Authority Procedural Rules (Article 2)
 - Financial Procedural Rules (Article 3)
 - Contract Procedural Rules (Article 4)
 - Information Procedural Rules (Article 5)
 - Protocol for Reporting at Meetings (Article 6)
 - Code of Conduct for Members (Article 7)
 - Code of Conduct for Employees (Article 8)
 - Member / Officer Protocol (Article 9)
- 2.3 Rule 3.2(vi) of the Authority Procedural Rules requires the Authority to adopt its Scheme of Delegation at its Annual Meeting each year.

3. Constitution Updates

Scheme of Delegation

- 3.1 The Scheme of Delegation describes the Authority's decision-making process and defines three levels of decisions as follows:
- **Key Decisions** are decisions having a significant financial or community impact as defined in the Authority Procedural Rules, or if the Chief Executive is of the view that a decision should be a Key Decision.
 - Key Decisions cannot be delegated except under urgent action in line with the Authority Procedural Rules.
 - **Executive Decisions** and **Administrative Decisions** are decisions which can be delegated to officers subject to the limitations defined in the Scheme of Delegation.
- 3.4 There are no amendments proposed to the existing Scheme of Delegation. Members are therefore asked to adopt the existing Scheme of Delegation attached at Appendix 1 in accordance with Rule 3.2 (vi) of the Authority Procedural Rules.

Contract Procedural Rules

- 3.5 Article 4 of MRWA's Constitution are the Contract Procedural Rules, the set of rules that relate to the supply to the Authority of services and the purchase, leasing and hiring of goods and the execution of works for the Authority. A copy of the current Contract Procedural Rules is provided at Appendix 2.
- 3.6 It is a requirement of the Contract Procedural Rules that every contract entered into by the Authority is made in compliance with those Rules, which are intended to reflect the requirements of relevant legislation, and most notably the Public Contracts Regulations 2015.
- 3.7 The Rules have been reviewed to ensure they are compliant with current legislation and modern procurement practices, and the following amendments to the Rules are proposed at this time:

Relevant legislation

- i) It is recommended that all references to European Procurement Directives and to the European Acquired Rights Directive should be removed as they no longer apply in the UK.

Methods of letting contracts

- ii) It is recommended that the financial levels at which different methods of letting contracts are applied should be amended to better reflect the requirements set out in the Public Contracts Regulations 2015. For example, the Regulations require that all public contracts with an estimated value over £25,000 must be advertised on Contracts Finder (a government-run national procurement portal) and that award of that contract must also be registered on Contracts Finder.

Contract value thresholds

- iii) Notwithstanding the above requirement to advertise, the wider obligations as set out in ~~the~~ Public Contracts Regulations 2015 only apply to contracts whose estimated value is above specific thresholds for defined procurement circumstances, and these thresholds are updated every two years. For example, current thresholds (as of January 2022) most applicable to MRWA are:

Supplies & services contracts - £213,477

Works contracts - £5,336,937

It is recommended that the Contract Procedural Rules be amended to reflect the appropriate thresholds which apply at the point in time at which any individual procurement is undertaken.

Right to exclude suppliers

- iv) Paragraph 13 of the Contract Procedural Rules states that the Authority will not accept a tender from an entity if that entity has previously withdrawn a tender in a different procurement exercise. In terms of above threshold procurements, there is no ability under the current legislation for an authority to refuse to accept tenders from a supplier on that basis. If the Authority purported to follow this rule on an above-threshold procurement, it would be at risk of challenge by the relevant supplier.

It is therefore recommended that this paragraph be removed from the Contract Procedural Rules.

Approved List

- v) Paragraph 7 of the Contract Procedural Rules states that the Chief Executive may determine that a list or lists may be kept of persons who, or firms which, may be invited to tender for contracts for the

supply of goods, materials or services or the execution of work of specified categories, values or amounts.

The use of an Approved List in the manner set out in the current Rules would not comply with the minimal requirements in the Public Contract Regulations 2015 that all contracts with an estimated value over £25,000 must be advertised on Contracts Finder.

It is therefore recommended that references to the use of an Approved List be removed from the Contract Procedural Rules.

Tender logistics

- vi) A number of paragraphs within the Rules refer to tender processes requiring written invitations to tender involving submission of hard copy letters and documents. It is however commonplace in the modern era for authorities to use dedicated electronic procurement portals for tender processes.

It is therefore recommended that the Contract Procedural Rules be amended to remove the mandatory requirement for hard copy, postal tender invitations and submissions but to define the use of an appropriate electronic procurement management process for above minimum threshold procurements. In the interim, hard copy submissions will continue to be accepted until such time as an agreed electronic procurement system is implemented.

- 3.8 In addition to the proposed amendments to the Contract Procedural Rules as set out above, a detailed set of procedures and guidance will be produced to assist all staff involved in undertaking any contract procurement on behalf of the Authority.
- 3.9 It is recommended that the Chief Executive be authorised to finalise the drafting of the updated Contract Procedural Rules as set out above and, subject to approval by Members, that the updated Rules and associated guidance be agreed in consultation with the Authority Chairperson.
- 3.10 There are no further proposed changes to the Authority's Constitution at this time.

4 Risk Implications

- 4.1 The following risk analysis had been undertaken in relation to this report:

Identified Risk	Likelihood Rating	Consequence Rating	Risk Value	Mitigation
Delegation of decisions not proportionate to levels of responsibility.	1	5	5	Scheme of Delegation defines scope and limitations for taking delegated decisions.
Members and officers not aware of levels of delegation.	2	4	8	Adoption and review of Scheme each year. Constitution included in training and induction programmes.
Updated rules not disseminated.	2	3	6	The revised Constitution will be published on the Authority's website.
Procedures for procurement are not aligned with the latest legislation.	2	3	6	Legal advice sought to ensure procedures are up to date.

5 HR Implications

5.1 There are no HR implications associated with this report.

6 Legal Implications

6.1 MRWA's procurement processes are defined by legislation, principally (for the majority of MRWA's procurements) the Public Contracts Regulations 2015. Failure to follow the requirements of this legislation would put the Authority at risk of challenge and potential legal action. The update to the Contract Procedural Rules will ensure the Rules are aligned with the latest legislation.

7 Environmental Implications

7.1 There are no environmental implications associated with this report.

8 Financial Implications

8.1 There are no financial implications associated with this report.

9 Conclusion

9.1 Members are asked to;

- i) approve the recommendation to adopt of the Scheme of Delegation (attached at Appendix 1) for the 2022/23 Municipal Year;
- ii) approve the recommendation to adopt the proposed amendments to the Contract Procedural Rules as set out in this report, and for the final drafting of the rules and associated procurement guidance to be finalised by the Chief Executive in consultation with the Authority Chairperson;
- iii) adopt the revised Constitution accordingly.

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The background documents to this report are open to inspection in accordance with Section 100D of The Local Government Act 1972 - Nil.

Appendices to be inserted