

**CONSTITUTION UPDATE AND GOVERNANCE MATTERS**  
**WDA/38/24**

**Recommendation**

It is recommended that:

1. Members adopt the Scheme of Delegation for the 2024/25 Municipal Year, attached at Appendix 1;
2. Members approve the updated sub-delegations allowed under Clause 2.4 of the Scheme of Delegation, attached at Appendix 2;
3. Members agree to adopt the revised Contract Procedural Rules, attached at Appendix 3;
4. Members agree to adopt the revised Constitution accordingly.

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**CONSTITUTION UPDATE AND GOVERNANCE MATTERS****WDA/38/24****Report of the Monitoring Officer****1. Purpose of the Report**

- 1.1 To recommend that Members adopt the Scheme of Delegation for the 2024/25 Municipal Year, attached at Appendix 1.
- 1.2 To recommend that Members approve the updated sub-delegations allowed for under Clause 2.4 of the Scheme of Delegation, attached at Appendix 2.
- 1.3 To recommend that Members agree to adopt the draft revised Contract Procedural Rules, attached at Appendix 3.
- 1.4 To seek Members' agreement to adopt the Constitution accordingly.

**2. Background**

- 2.1 At the commencement of a new municipal year, it is appropriate for the Constitution to be reviewed and (if necessary) 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 Article 1 of the Authority's Constitution is the Scheme of Delegation (attached at Appendix 1); this 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.
- 3.2 Clause 2.4 of the Scheme of Delegation allows for the Chief Executive or Statutory Officers to further delegate any function delegated to them under the Scheme to another Officer or Officers. Attached at Appendix 2 are the current sub-delegations that the Authority has in place, which have been reviewed and updated for the purposes of this annual review. The key amendments proposed to the sub-delegations are:

#### **Exemptions to tendering procedures**

The sub-delegations from the Chief Executive to the respective Directors have been updated to align the value at which contracts may be approved for exemption from tendering procedures to £30,000 (inclusive of VAT). This value aligns with that proposed for the updated Contract Procedural Rules (as set out later in this report) above which formal competitive tender processes must be advertised and undertaken.

#### **Director of Business Services: approval of appointments**

The sub-delegation allowing the Director of Business Services and Strategy to approve appointments, promotions and temporary appointments below Manager level within their section has been updated to remove the reference "*in the absence of the Director of Finance*".

- 3.3 Clause 4.1 of the Scheme of Delegation defines the circumstances in which a decision cannot be defined as an ‘Administrative Decision’. Limb (g) of this Clause states that a decision will not comprise an Administrative Decision if:

*(g) it requires the acceptance of a tender for a contract in excess of £100,000 unless such an acceptance satisfies value for money requirements stated in the Contract Procedural Rules.*

It is proposed that the value set out in the above limb is clarified and updated to £120,000 (*inclusive of VAT*) to align with the equivalent levels set out in the draft proposed Contract Procedural Rules (as set out later in this report).

- 3.4 There are no other 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 and approve the proposed amendments to the sub-delegations attached at Appendix 2.

### **Contract Procedural Rules**

- 3.4 Article 4 of MRWA’s Constitution are the Contract Procedural Rules, the set of rules that relate to the supply of services, the purchase, leasing and hiring of goods and the execution of works for the Authority.
- 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 A comprehensive review of the Authority’s procurement procedures is currently being undertaken; this includes a detailed review and redraft of the Contract Procedural Rules, which underpin the Authority’s procurement procedures. The Contract Procedural Rules have been reviewed to ensure they are compliant with current legislation and modern procurement practices. A copy of the proposed redrafted Contract Procedural Rules is provided at Appendix 3.
- 3.8 The following summarises the key amendments to the Contract Procedural Rules proposed at this time:

#### Relevant legislation

- i) All references to European Procurement Directives and to the European Acquired Rights Directive be removed as they no longer apply in the UK.

#### Methods of letting contracts

- ii) The financial levels at which different methods of letting contracts are applied are proposed to be amended to better reflect the requirements set out in the Public Contracts Regulations 2015 (as amended). For example, the Regulations (and associated Guidance Note) require that all public contracts with an estimated value over £30,000 (inclusive of VAT) 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) There are specific aspects of the Public Contracts Regulations 2015 that 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, the current thresholds (from 1<sup>st</sup> January 2024) most applicable to MRWA are:

Supplies & services contracts - £214,904 (inc VAT)

Works contracts - £5,372,609 (inc VAT)

It is proposed that the Contract Procedural Rules be amended to reflect that there are changes in the thresholds from time to time and that the Rules will always have regard to the most up to date thresholds.

In addition, the financial thresholds set throughout the Contract Procedural Rules have been updated to clarify and standardise the approach to the treatment of VAT, all values presented being inclusive of VAT. For example, the value in the existing rules above which contracts must be done under Authority seal is £100,000. This has been amended to £120,000 (inclusive of VAT) in the draft updated Contract Procedural Rules.

#### Right to exclude suppliers

- iv) Paragraph 13 of the existing 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 proposed that this rule be removed from the Contract Procedural Rules.

#### Approved List

- v) Paragraph 7 of the existing 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 (as amended) that all contracts with an estimated value over £30,000 (inc VAT) 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 now commonplace for authorities to use dedicated electronic procurement portals for tender processes, and MRWA has adopted the use of the 'My Tenders' procurement portal for these purposes.

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.

- 3.9 The Rules have also been redrafted to make it simpler to identify and follow the most appropriate route for any given procurement.

- 3.10 In addition to the proposed amendments to the Contract Procedural Rules as set out above, a detailed set of procedures and guidance are being developed to assist all staff involved in undertaking any contract procurement on behalf of the Authority. These procedures will support the Contract Procedural Rules and will include template documents and specific procedures for officers undertaking procurements. Once complete, the procedures will be incorporated as Appendices to the Rules.
- 3.11 It should also be noted that procurement legislation is changing, and the Public Contracts Regulations 2015 are due to be replaced by legislation under the Procurement Act 2023 later this year. The Authority's Contract Procedural Rules will be updated in line with the legislation at the appropriate time and any subsequent updates required to the Rules brought to Members for approval.
- 3.12 There are no further proposed changes to the Authority's Constitution at this time.

#### **4 Risk Implications**

- 4.1 The following risk analysis has been considered in relation to this report:

| <b>Identified Risk</b>   | <b>Likelihood Rating</b> | <b>Consequence Rating</b> | <b>Risk Value</b> | <b>Mitigation</b>  |
|--|--------------------------|---------------------------|-------------------|--|
| 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 | Professional advice sought to ensure procedures are up to date and aligned with latest legislation. |
|---|---|---|---|---|

## **5 HR Implications**

5.1 All staff responsible for procuring on behalf of the Authority will be provided with training and guidance in the agreed Contract Procedural Rules and the supporting documentation.

## **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, and continuously updated as that legislation changes.

## **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 2024/25 Municipal Year;
- ii) approve the recommendation to update the sub-delegations allowed under Clause 2.4 of the Scheme of Delegation, as attached at Appendix 2;
- iii) approve the recommendation to adopt the updated Contract Procedural Rules attached at Appendix 3;
- iv) 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.