

 <b>Overview and Scrutiny Committee 4</b> <b>April 2017</b>		<b>Agenda Item No. 5</b>
<b>Title</b>	<b>12 month review of the impact of the changes to the 2016 Code of Procurement Practice</b>	
<b>For further information about this report please contact</b>	<a href="mailto:John.roberts@warwickdc.gov.uk">John.roberts@warwickdc.gov.uk</a> <a href="mailto:Mike.snow@warwickdc.gov.uk">Mike.snow@warwickdc.gov.uk</a>	
<b>Wards of the District directly affected</b>	All	
<b>Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?</b>	No	
<b>Date and meeting when issue was last considered and relevant minute number</b>		
<b>Background Papers</b>		

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	Yes
<b>Included within the Forward Plan? (If yes include reference number)</b>	Yes/No
<b>Equality &amp; Sustainability Impact Assessment Undertaken</b>	No (If No state why below)
No assessment as this is a progress report.	

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive	16/03/2017	Andy Jones
Head of Service	16/03/2017	Mike Snow
CMT		
Section 151 Officer	16/03/2017	Mike Snow
Monitoring Officer	16/03/2017	Andy Jones
Finance	16/03/2017	John Roberts
Portfolio Holder(s)	16/03/2017	Cllr Peter Whiting
<b>Consultation &amp; Community Engagement</b>		
Senior Management Team Procurement Champions		
<b>Final Decision?</b>	Yes	
<b>Suggested next steps (if not final decision please set out below)</b>		

## 1. SUMMARY

This report serves to provide a 12 month review of the impact of the changes to the Code of Procurement Practice during the financial year 2016/17.

## 2. RECOMMENDATION

2.1 It is recommended that the progress across the procurement function over the past 12 months is noted, as shown in Appendix One.

### REASONS FOR THE RECOMMENDATION

3.1 The Council's Code of Procurement Practice was revised to bring it into line with the latest legislative requirements as well as to streamline and simplify processes.

3.2 The changes were required because of:

- The introduction of recent legislation, in particular, the Public Contract Regulations 2015, the Small Business, Enterprise and Employment Act 2015 and the Local Government (Transparency Requirements) (England) 2015 and to accommodate these changes within the Code of Procurement Practice .
- The Code also introduced the Sustainable Procurement Policy, Ethical Procurement Statement and Social Value Policy consistent with current practice adopted within other Local Authorities

3.3 Mandatory changes brought about by introduction of the above outlined legislation.

3.3.1 All tenders over £25,000 in value must now be advertised on the UK Government's *Contracts Finder* website. This website has been designed as a national single information resource where suppliers may register free of charge to receive details of any public sector business opportunity within their particular area of interest. Previously the Council could choose where to advertise its tenders required only to ensure adequate competition.

3.3.2 Details of all tenders advertised and all contracts awarded by the Council with a value of £5,000 or more must be published on the Council website. Previously the Council was only obliged to formally publish details of all EU tender awards and maintain a basic Contracts Register.

3.3.3 Pre-Qualification Questionnaires (PQQ), the process used to establish a bidder's credentials (legal, financial and technical capabilities), are prohibited on any procurement exercise with a value of £164,100 (200,000 euros) or less. Procurements above this value may only use the UK national standard PQQ which must not be modified in format or content. An assessment of the bidder's legal, financial and technical capabilities must now be undertaken just prior to writing the contract award recommendation report. Previously the Council was able to bespoke its PQQ and seek this information on any tender process irrespective of value.

3.3.4 All procurement documentation must now be available for electronic download free of charge from the Council or other agreed website from the date the tender advertisement is placed. Previously interested companies had to request the tender documents from the Council.

- 3.3.5 Restrictions limiting the level of variations or changes to existing contracts have also been introduced. The Public Contract Regulations 2015 Regulations set out in detail the circumstances whereby an existing contract may be modified and when such changes would be significant enough that the contract must be retendered. The conditions for allowing changes to contracts must be detailed in the tender documents. These changes apply to not just x2016xcontracts but those contracts awarded prior to the x2016xRegulations coming into force.
- 3.6 Voluntary changes - The notable changes to the 2016 Code include the thresholds for the relative tender processes, with the threshold for which three quotations to be obtained by the Head of Service being increased from £5,000 - £9,999 to £5,000 - £24,999. Contract values in the range £25,000 - £49,999 would continue to require formal quotations using the CSWJETS E- Portal (Intend platform) Procurement system. This change put the Council's practices in line with the Government's requirements, whilst ensuring there is greater flexibility to support managers with low level spends and still maintaining the necessary level of Procurement oversight and management to ensure compliance, probity and to minimise risks.
- 3.7 Other differences between previous Code of Procurement Practice and the 2016 Procurement Code is that the 2016 Procurement Code provides officers with more information and guidance on areas of best practice than the earlier version of the Code of Procurement Practice. Examples include:
- Stakeholder and Early Market engagement – information about the steps which may be taken in consulting with services users and providers to better shape the service specification before going out to tender;
  - Use of Framework Agreements – information on the potential benefits of using framework agreements and some of the legal considerations;
- 3.8 A significant number of policies, templates, guidance notes and a Procurement Manual were published on the Council's intranet to help and support Managers and Staff.
- 3.9 Summary of Policies introduced in 2016 Code of Procurement Practice:-
- Ethical Procurement Statement- this statement sets out WDC's approach to ethical procurement.
  - Sustainable Procurement Policy- the purpose of this document is to promote Responsible Procurement in the purchasing of goods, works and services and to provide information and advice to potential Suppliers
  - Social Value Policy - This policy statement summarises Warwick District Council's approach to 'social value'. It covers: what we mean by the term 'social value', social value outcomes and the scope of Warwick District Council's approach
- 3.10 Future Development for 2017/18
- Although significant progress has been made, it is recognised that there is a need to continue to embed the procurement procedures across the authority and continue to improve performance in Procurement and contract management.

- The next stage is to be able to focus more on supplier engagement and the associated benefits that come with good, effective procurement and contract management.
- To foster supplier engagement, we will continue to engage with suppliers by providing seminars and workshops with the aim of enabling local Companies to consider bidding for procurement opportunities and support the Council's commitment to the local economy.
- To create and publish a Forward Procurement Plan (FPP) for 2017. Much of the over threshold spend has project teams created to manage the process, and are usually well managed, we need to improve the preparation and planning of the under threshold spend.
- Continue to provide training and ad hoc surgeries with all Managers, Officers and Staff involved in the procurement process and launch , promote and embed the Code of Procurement Practice 2017 and 2017 - 2019 Procurement Strategy.

#### **4. POLICY FRAMEWORK**

4.1 The Code of Procurement Practice is a fundamental element of the Council's policy framework and supports the ability of the Council to demonstrate that it is achieving value for money from its expenditure and that its contracts and services are being managed in an open and transparent manner, in line with the Council's Core Values.

##### **4.2 Fit for the Future**

As part of the Council's policy framework, the Code of Procurement Practice underlines how the Council acts in securing and managing its Procurement requirements to meet the aspirations as part of 'Fit for the Future'.

#### **5. BUDGETARY FRAMEWORK**

The Code of Procurement Practice complements the Code of Financial Practice in ensuring that financial best practice is applied to the procurement of goods, services or works. Compliance helps protect the council by minimising procurement risks, whilst ensuring best value is obtained.

#### **6. RISKS**

The main risks associated with procurement can be cost overruns and the threat of legal challenge. The 2016 Procurement Code clearly outlines the correct practice and procedures all "responsible" officers should follow at different financial thresholds.

#### **7. ALTERNATIVE OPTION(S) CONSIDERED**

7.1 No alternatives options are for consideration as this is a progress report.

## APPENDIX ONE

### 12 month review of the impact of the changes to the Code of Procurement Practice

Changes to CoPP	impact of the changes						
<p>3.2 The notable changes to the Code are the thresholds for the relative tender processes, with the threshold for which three quotations to be obtained by the Head of Service being increased from £5,000 - £9,999 to £5,000 - £24,999. Contract values in the range £25,000 - £49,999 would continue to require formal quotations using the Intend Procurement system.</p> <p>This change put the Council's practices in line with the Government's requirements. The lower threshold of £10,000 for formal quotations applies to Central Government.</p>	<p><b>No of Tenders issued 2016-2017</b></p> <table border="1" style="width: 100%;"> <tr> <td>£5k - £24,999</td> <td style="text-align: center;"><b>12</b></td> </tr> <tr> <td>£25k - £49,999</td> <td style="text-align: center;"><b>7</b></td> </tr> <tr> <td>Over £50k</td> <td style="text-align: center;"><b>22</b></td> </tr> </table>	£5k - £24,999	<b>12</b>	£25k - £49,999	<b>7</b>	Over £50k	<b>22</b>
£5k - £24,999	<b>12</b>						
£25k - £49,999	<b>7</b>						
Over £50k	<b>22</b>						
<p>3.7 To promote procurement opportunities within the local economy the proposed Code has been amended to ensure that a minimum of two local suppliers must be invited to bid. Also so, to increase the number of local SME's registered on the E Portal, Invitations to Participate will be circulated using Federation of Small Businesses weekly e-newsletter.</p>	<p>Procurement recognises its responsibilities to local communities. Local business and small and medium sized enterprises should be able to compete for work alongside contractors from outside the area and larger organisations. It is important to ensure that in any procurement or commissioning process, the selection phase is made as simple as possible and proportionate to the scale and complexity of the contract.</p> <p>In appropriate exercises we require main contractors to include local companies in their supply chain. There is no standard percentage requirement that we apply to this. However, it has to be proportionate to the requirement and the way a particular market operates.</p> <p>Clearly, there is always room for improvement and the procurement team will continue to work hard on engaging with the local business community.</p>						
<p>3.8 The Code also introduced the Sustainable Procurement Policy, Ethical Procurement Statement and Social Value Policy in line with current practices within Local Authorities.</p> <p>The Sustainable Procurement Policy and Ethical Procurement Statement is required to meet the Council's obligations in accordance with the UK Government Sustainable Development Strategy</p>	<p>The Council is including sustainable requirements in every tender. The requirements will address economic, social, environmental requirements.</p> <p>Work continues to take place with Officers across the council in using outcome specifications which are not overly restrictive and rely more on the expertise of the market. Used as appropriate, outcome specifications enable a more flexible and intelligent approach to procurement in support of the Social Value Act.</p>						

	<p>We will continue to promote equality and diversity and consider equalities in setting selection criteria for procurement and commissioning activities, where appropriate, we work towards continually introducing ethical considerations into our contracts where appropriate and increase its awareness and importance of related issues with suppliers.</p>
<p>3.9 The 2016 Code also refers to the need to adhere to the Guide to Tender Evaluation. The purpose of this guide is to assist members of the evaluation panel assess tender submissions and to ensure practice and procedures employed to carry out this activity conform to the Council’s obligations of Integrity, Transparency and Accountability.</p> <p>The guide provides information in relation to the evaluation process and timetable of events, scoring responses and procedural fairness, and scoring sheets and a declaration of confidentiality and interest form to be completed by each panel member.</p>	<p>There are clear established criteria included within specifications. Procedures have been developed to apply weightings to evaluation criteria. There is a clear audit trail to demonstrate how criteria has been weighted and scored.</p> <p>The purpose of this guide is to assist members of the evaluation panel assess tender submissions and to ensure practice and procedures employed to carry out this activity conform to the Council’s obligations of Integrity, transparency and Accountability.</p> <p>The guide provides information in relation to the evaluation process and timetable of events, scoring responses and procedural fairness, and scoring sheets and a declaration of confidentiality and interest form to be completed by each panel member.</p>
<p>3.10 The 2016 Code seeks to re-enforce the need for the Procurement Manager to be consulted ahead of proposing to extend a contract, including using an extension option within the original contract.</p> <p>The purpose being to ensure that value for money reviews are systematically carried out by the Heads of Service, with advice from the Procurement Manager in a timely manner.</p> <p>It is necessary to ensure that options to extend contracts are not committed to without due consideration of the contract performance. Where it is identified that the current contract is no longer delivering value for money and / or regularly achieving the level of service and quality levels required by the Council and / or where the requirement is no longer appropriate, suitable and timely action plans will be implemented.</p>	<p>It was envisaged that procurements be planned on a 3 year cycle, as part of a cultural change towards a more pro-active approach where large procurements are planned in advance. Each large procurement is preceded by a formal options appraisal process, so that approach and scope would be determined on the basis of concrete evidence.</p> <p>To achieve value for money and avoid duplication of contracts and ensure that a tender process is carried out within a timely manner, all contracts should be added to the Council’s Contract Register. By having an up to date Contracts Register will also support the Council’s commitment to delivering the Government’s openness and transparency agenda. Analysis of business need and procurement or commissioning models should be planned and undertaken in a timely manner.</p> <p>The information captured on the contract register enables a second ‘due diligence’ check by the procurement officer to establish if any procurements will be subject to the Public Contracts Regulations 2015 (OJEU contracts). The contracts register is also used to check</p>

	<p>that each person responsible for purchasing have the right information to enable their procurement activity to be properly planned and to ensure that budgets are in place. The register also enables the association to demonstrate that approved procedures have been followed and legislative requirements have been met.</p> <p>Checks are carried out on the type of contracts being procured against the 'common procurement vocabulary' codes (CPV Codes) to establish which contracts are classed as 'works' or 'services' as defined by the regulations. The overall contract values are also established and compared to the published EU 'thresholds'. Legal advice is sought where necessary.</p> <p>Other important compliance issues relating to the 'service' or 'specification standards' are obtained using bespoke specification software and Standard Forms of Contract. This approach ensures robust and up-to-date procedures are written into Invitation to Tender (ITT) documents.</p> <p>Extensive analysis is being undertaken to consider all third party spend across the Council in order to ascertain any savings opportunities not yet identified. It is believed that further significant opportunities may exist, or could exist in the future when contracts come up for renewal, and we need to capture and deliver these in a robust and transparent way. Better management of third party spend throughout the Procurement cycle is an integral way of ensuring value for money.</p>
<p>3.11 Other notable updates within the 2016 Code of Procurement Practice Include:-</p> <ul style="list-style-type: none"> <li>• Section 10 – Constructionline shall be used as the basis for selecting Contractors for works and construction related consultants to quote or tender for contracts up to the value of the EU limits for Works and Services</li> <li>• Section 11.1.1– The Procurement Manager (or nominated deputy) will be responsible for opening Tenders (Opening Ceremony) in respect of all tenders and quotations issued via the e-tendering portal</li> <li>• Section 11.8 – Clarification of “Alcatel” standstill period</li> </ul>	<p>By introducing the Sustainable Procurement Policy, Ethical Procurement Statement and Social Value Policy the Council is better placed to demonstrate that it is achieving value for money from its expenditure and that its contracts and services are being managed in an open and transparent manner, in line with the Council’s Core Values.</p> <p>Procurement processes have continued to be reviewed and adapted to reflect feedback from our supplier base and a changing backdrop to public procurement. With the process slimmed down making it more efficient yet still robust enough to safeguard the council. As part of this ongoing process lessons are being continually learned and we have almost entirely eradicated the use of Pre-Qualification Questionnaires.</p>

• Section 14 – Appointment of Consultants	
---	--