

 <b>Executive</b> <b>31 October 2018</b>		<b>Agenda Item No.</b> <b>4</b>
<b>Title</b>	Code of Procurement Practice	
<b>For further information about this report please contact</b>	Mike Snow 01926 456800	
<b>Wards of the District directly affected</b>	N/A	
<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Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?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>	Executive 6 April 2016	
<b>Background Papers</b>		

<b>Contrary to the policy framework:</b>	No
<b>Contrary to the budgetary framework:</b>	No
<b>Key Decision?</b>	No
<b>Included within the Forward Plan? (If yes include reference number)</b>	No
<b>Equality Impact Assessment Undertaken</b>	N/A

<b>Officer/Councillor Approval</b>		
<b>Officer Approval</b>	<b>Date</b>	<b>Name</b>
Chief Executive/Deputy Chief Executive	15/10/18	Andy Jones
Head of Service	15/10/18	Mike Snow
CMT	9/10/18	
Section 151 Officer	15/10/18	Mike Snow
Monitoring Officer	25/9/18	Andy Jones
Finance	15/10/18	Rebecca Reading
Portfolio Holder(s)	15/10/18	Peter Whiting
<b>Consultation &amp; Community Engagement</b>		
Insert details of any consultation undertaken or proposed to be undertaken with regard to this report.		
<b>Final Decision?</b>		No
<b>Suggested next steps (if not final decision please set out below)</b> Final approval to be made by Council.		

## 1. **Summary**

- 1.1 This report presents proposed amendments to the Code of Procurement Practice.

## 2. **Recommendation**

- 2.1 That the Executive recommend that the Council adopt the updated Code of Procurement Practice as detailed in the attached Appendix 1.

## 3. **Reasons for the Recommendation**

- 3.1 The Council's Code of Procurement Practice was last formally reviewed and amended in 2016. It is recognised good practice to keep this document under review and make amendments as necessary to meet the changing environment in which the authority, its services and its finances operate.
- 3.2 The revisions to the Code of Procurement Practice have been developed by Warwickshire County Council's Head of Procurement, as the Council's Strategic Procurement Partner. The proposals have been considered at length by the Procurement Board (Senior Management Team), and the Procurement Champions.
- 3.3 The needs of councils are changing and councils need to be innovative, flexible and agile in order to be able to respond quickly and efficiently in order to maximise opportunities as and when they arise. Councils therefore need to have in place a procurement framework which supports innovation, agility and flexibility but at the same time provides the appropriate level of control, safeguard and scrutiny that would be expected in an organisation spending public money. This is the context within which the review has been undertaken and a revised Code proposed.
- 3.4 The current Procurement Code of Practice (the Code) generally includes the elements that would be expected to see in a document of this type. However, because the Code has been built up over time some elements have become confused, overly complex and in some places contradictory.
- 3.5 The level of detail contained in the Code also varies significantly between sections. Some sections are light touch focussing on the more strategic procurement principles that the Council is seeking to achieve whereas other sections go into great detail about the actual processes that officers need to follow to satisfy both statutory and local procurement requirements. This mixed level of detail coupled with the confused, complex and in some places contradictory elements make it difficult for officers to comply with their obligations. The revised code is therefore seeking to: -
- Focus on what needs to happen in relation to procurement rather than how procurement is done. The 'How' will be covered in procurement guidance issued by WDC Procurement via the Intranet. This approach has the benefit of allowing the 'how' to be more flexible and more easily amended to reflect experience, good practice and legislation as it will not be formally part of the Code and therefore not part of the Council's Constitution. The Code does, however, have the teeth to force officers to follow any procurement guidance issued.

- Ensure that the Council's statutory obligations in relation to procurement are satisfied through the Code with local policy and practice requirements communicated to officers through supporting procurement guidance.
  - Provide a structure for the document that is more aligned to how the procurement process happens and therefore the Code should be easier for officers to follow and comply with.
  - Provide the necessary information in a clear concise way that is detailed enough for officers to know their obligations but short enough as to be manageable. As a consequence of the review, the proposed Code is much shorter than the current version – down from 43 pages to 25 pages.
- 3.6 It is clear from the review undertaken that awareness of the Code is high and Officers are familiar with the general look and feel of the Code. However, the revised Code contains some new/different requirements and therefore once agreed, the new Code will need to be formally re-launched. In support of this, the Council has already reviewed its procurement training offer to incorporate the changes proposed in the revised Code. The intention is that once the revised Code is formally adopted by the Council, training content can be finalised and training delivery can commence.
- 3.7 Specific Proposed Changes to note within the proposed Code.
- 3.7.1 Minimum Requirements - The revised Code details the minimum requirements to be complied with by officers. Officers are able to do more than the minimum but cannot do less.
- 3.7.2 Legal Compliance – The revised Code includes for the requirements of the Public Contract Regulations 2015, the Local Government Transparency Code 2015 and the Concessions Contracts Regulations 2016 and has been future proofed for Brexit in as much as it is currently possible to do.
- 3.7.3 Scope of the Revised Code - Procurement is not specifically defined in the Code but the Code has been produced to encompass all elements of the procurement cycle i.e. from the initial identification of a need through to the disposal of goods or the de-commissioning of services. The revised Code contains a new section clarifying the minimum requirements for when the Council is acting as a supplier of Goods Works or Services to other organisations and a section on the awarding of Concession contracts.
- 3.7.4 Roles & Responsibilities - There is no clarity in the current Code regarding who is accountable for what and there is inconsistency in terminology throughout the document e.g. Officers, Staff, Individuals etc. The new Code has clear responsibilities and accountabilities and consistent terminology throughout including for Elected Members (Part 1 Section 5).
- 3.7.5 Collaboration – In support of the national procurement collaboration agenda, the revised Code aims to make collaboration easier for Council officers. The revised Code makes provision for the Council to accept the use of the Code equivalent of the collaboration lead as deemed compliance with the competition requirements of the WDC Code. Similarly, when using framework contracts established by Purchasing Consortia (e.g. CCS, ESPO, YPO) the Code equivalent of the Consortia will be deemed compliance with the competition requirements of the WDC code.

- 3.7.6 The Gateway Process - The Council's requirements for the management of procurement projects 'the Gateway Process' are not specifically included in the revised Code but the gateway process is still recognised within the Code and is required to be followed. It should be noted that in the revised Code, it is proposed that the threshold at which the Gateway process is required to be followed has been raised from £50,000 to the prevailing EU threshold for Goods and Services (currently £181,000) in recognition of the fact that the gateway processes were primarily introduced to manage the councils' more significant procurement projects.
- 3.7.7 Local Supply – WDC, like most local authorities, is seeking to use procurement to deliver its wider corporate objectives and in particular supporting the local economy where it can. In support of this, the current Code requires 2 local quotes for procurements above £25,000. However, as £25,000 is the threshold at which the Council is required by the Public Contract Regulations to advertise its procurement opportunities nationally via Contracts Finder, officers are unable to deliver on this objective. The revised Code is therefore requiring 'a minimum of 1 local quote' for procurements below £25,000 but with the aim of securing all quotes from local suppliers at this level.
- 3.7.8 Constructionline – this is a Government-run scheme, which collects, assesses and monitors your standard company information. It is the largest pre-qualification database in the UK and the UK's leading procurement and supply chain management service. The use of Constructionline as the means of selecting potential suppliers to deliver Works contracts is mandated in the current Code. However, in light of our strategic objective to support SMEs, this is potentially restrictive and may detrimentally impact on the ability of local construction related suppliers from competing for Council work. The revised Code has therefore removed the requirement to be registered with Constructionline in order to undertake Works contracts for the Council.
- 3.7.9 Social Value (SV) – The current Code places obligations on Officers that exceed the current statutory obligations in relation to social value. The SV Act currently only applies to 'Services' contracts that exceed the EU threshold (currently £181,000). Through the current Code, the Council requires SV to be considered for all contracts (Goods/Services/Works) with a value in excess of £100,000. The revised Code has been written assuming that the Council will comply with its statutory obligations in relation to SV i.e. consider SV for 'Services' contracts that exceed the EU threshold but Officers are not precluded from considering SV for lower value contracts or in contracts for 'Goods' or 'Works' and this will be reflected in procurement guidance.
- 3.7.10 Role of the Executive – As stated earlier, local authorities need to be innovative, flexible and agile in order to be able to maximise opportunities as and when they arise and the framework within which procurement is undertaken needs to support this. The revised Code proposes a role for the Executive which is more focussed on the significant procurement issues that might impact on the Council with more of the day to day decision making resting with Officers e.g.
- Exemptions – the value at which prior agreement from the Executive is required for exemptions is raised from £20,000 to £50,000 unless there is a concern from Officers about the risk the Council might be taking by granting the exemption. In these circumstances, the Executive would be consulted prior to any work taking place.

- Reporting of non-compliance with the Code – the current Code requires that all non-compliance with the Code (regardless of the scale of the non-compliance) is reported to the Executive. The revised Code requires that non-compliance will only be reported to the Executive where it is considered by the Head of Finance to be significant from a risk perspective.

3.7.11 Where it is proposed in the new Code to remove prior agreement from Members for lower level decisions, these decisions will still be reported retrospectively to members as they are currently. It is considered that this approach coupled with more clarity around roles, responsibilities and accountabilities will enable Members to focus on the more significant procurement issues impacting on the Council.

3.7.12 E Procurement – The current Code recognises E Procurement but doesn't enforce the use of E Procurement. Local Government is obligated under the Public Contract Regulations to undertake its procurement electronically from October 2018 and therefore the revised Code is now mandating the use of E Procurement for all procurements in excess of £10,000.

3.7.13 Types of Contract – The current Code contains 6 different 'Types of Contract'. Two changes are proposed in the revised Code: -

- Type 1 contracts in the current Code cover procurements with a value between £1 and £5,000. In the revised Code it is proposed that the upper value of Type 1 contracts is increased to £10,000. With the requirement for procurement to be undertaken electronically from October 2018, it is considered that a £5,000 threshold is too low to require 3 quotations managed through an E Procurement system.
- Type 6 contracts were classified in the current Code as 'Framework Contracts'. However, Framework contracts are a form of contract awarded following a procurement process rather than a type of contract that requires a different process of procurement. The revised Code deals with the awarding and use of Frameworks specifically in Part 2, Sections 7, 8 and 9 and therefore Type 6 contracts have been removed from the revised Code.

#### 4. **Policy Framework**

##### 4.1 **Fit for the Future (FFF)**

These are the words to use:

"The Council's FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council's FFF Strategy.

<b>FFF Strands</b>		
<b>People</b>	<b>Services</b>	<b>Money</b>
<b>External</b>		
<b>Health, Homes, Communities</b>	<b>Green, Clean, Safe</b>	<b>Infrastructure, Enterprise,</b>

		<b>Employment</b>
<u>Intended outcomes:</u> Improved health for all Housing needs for all met Impressive cultural and sports activities Cohesive and active communities	<u>Intended outcomes:</u> Area has well looked after public spaces All communities have access to decent open space Improved air quality Low levels of crime and ASB	<u>Intended outcomes:</u> Dynamic and diverse local economy Vibrant town centres Improved performance/productivity of local economy Increased employment and income levels
<b>Impacts of Proposal</b>		
No direct impact	No direct impact	No direct impact
<b>Internal</b>		
<b>Effective Staff</b>	<b>Maintain or Improve Services</b>	<b>Firm Financial Footing over the Longer Term</b>
<u>Intended outcomes:</u> All staff are properly trained All staff have the appropriate tools All staff are engaged, empowered and supported The right people are in the right job with the right skills and right behaviours	<u>Intended outcomes:</u> Focusing on our customers' needs Continuously improve our processes Increase the digital provision of services	<u>Intended outcomes:</u> Better return/use of our assets Full Cost accounting Continued cost management Maximise income earning opportunities Seek best value for money
<b>Impacts of Proposal</b>		
The Code of Procurement Practices, and supporting documents are designed to assist staff in their roles. At the same time, they should help protect staff and ensure that they are above scrutiny.	Good procurement helps the Council achieve its priorities and use its resources to ensure better outcomes.	Good procurement helps the Council achieve its priorities. If procurement is ineffective, there will be less capacity, fewer goods, limited benefits, financial uncertainty and/or poorer outcomes.

## 4.2 Supporting Strategies

Each strand of the FFF Strategy has several supporting strategies and the relevant ones for this proposal are explained below:-

- Procurement Strategy
- Code of Procurement Practice

## 4.3 Changes to Existing Policies

This report proposes changes to the Council's Code of Procurement Practice.

## **5. Budgetary Framework**

- 5.1 Improved procurement practice helps to reduce the costs associated with undertaking procurement. 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. The actions to date from the Procurement Action Plan have all had a positive contribution to savings and efficiencies.

## **6. Risks**

The Code is intended to reduce the risks that may be presented from poor procurement. These risks may include:-

- Legal challenge
- The authority receiving poor value for money
- Resources being expended that do not achieve desired outcomes
- Reputational damage.

## **7. Alternative Option(s) considered**

- 7.1 Members may wish to retain the existing Code of Procurement Practice or propose alternative changes. However, as explained in Section 3, the proposals are intended to present a sound foundation under which to progress good procurement across the Council.