

Warwick District Council Code of Procurement Practice

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INTRODUCTION

This code has been revised to include recent changes in legislation including case law and the EU Remedies Directive 2009.

The code sets out how Warwick District Council will procure goods, works and services.

Managers, Officers and Elected Members of the Council will be bound by this code when procuring goods and services on behalf of the Council.

The procedures within this code are set out in accordance with the Public Contracts Regulations 2006 and best practice. They are not designed to be a full set of instructions to the procurement process but outline the procedures to be followed.

The code is designed to ensure transparency of the process and fairness in allowing all suitable suppliers the opportunity to bid for Council work. In following the code managers and officers will be supporting the Council's objectives and values.

Melanie Gillman MCIPS – Procurement Manager WDC

1. PURPOSE

- 1.1. The Local Government Act 1972 requires the Council to have standing orders with respect to the making of contracts. They are part of the Council's Constitution and are, in effect the instructions to Council Officers and Members for making contracts on behalf of the Council.
- 1.2. The purpose of this Code is to set clear rules for the procurement of works, goods and services for the Council and to ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach. Accordingly this Code must be followed for ALL contracts (with exception of internally recharged services) for:
 - The supply of goods to the Council
 - The supply of services to the Council; and
 - The execution of works for the Council

Or any of the above for which the Council is responsible for payment but are not directly supplied to the Council.
- 1.3. The Council has a Procurement Strategy, which is the policy of the Council setting out how the Council intends to undertake and improve procurement activity.
- 1.4. The Council operates devolved procurement. This means that responsibility for procurement activity lies with each section. However, the Council has a Procurement Manager available for advice and with overall responsibility for compliance with this code and the wider UK and EU legislation.
- 1.5. The Council is also subject to EU law with regard to procurement, which requires contract letting procedures to be open, fair and transparent. This Code provides a basis for true and fair competition in contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the council has a procurement regime that is fully accountable and compliant with EU law.
- 1.6. The Code makes provision for the Council to use its purchasing power to assist in delivering elements of the Corporate Strategy, for example:-
 - ensuring that environmental concerns are reflected by requiring contractors to follow sustainable practices.
 - requiring contractors to employ the sort of equal opportunity policies which this Council itself employs.
- 1.7. Wherever used in this document the term "Senior Manager" shall be taken to have the same meaning as in the Code of Financial Practice.
- 1.8. This Code must be used in conjunction with the Procurement Strategy.
- 1.9. This Code should be viewed as an aid to good management and not as a hindrance.

2. ROLE OF THE PROCUREMENT MANAGER

- 2.1 Prior to entering into any contract arrangement the Procurement Manager must be consulted early on in the process. This should be at the start of considerations, well before any tender documents are prepared. The advantages of this are:-
 - 2.1.1 The Procurement Manager will be able to advise on the process to be followed so as to comply with the Council's Code of Procurement Practice and the Public Contracts Regulations 2006.
 - 2.1.2 By overseeing all contracts, the Procurement Manager will get the overall view as to whether there may be advantages of bringing selected contracts together, for example for economies of scale, or even where there is the requirement to bring contracts together to ensure EU compliance.
 - 2.1.3 The Procurement Manager will be able to promote and assist with the use of buying consortia or other available framework agreements, so as to avoid the cost and time of going through the full procurement process.
 - 2.1.4 The Procurement Manager can explore opportunities for collaboration with other local authorities or public bodies to enable the council to benefit from aggregation.
- 2.2 The guidance and instructions issued by the Procurement Manager should be followed in all instances unless there is good reason why they are not believed to be appropriate. In these cases, it will be for CMT to agree that the Procurement Manager's recommendations are not followed, taking into account all known factors and advice.
- 2.3 The Procurement Manager will not normally lead on the tendering for supplies and services. For complex projects, it will be appropriate that the Procurement Manager will be part of the project team managing the procurement.
- 2.4 For corporate supplies, it may be appropriate for the Procurement Manager to take the lead. However, in these instances, the Procurement Manager will need to work with relevant budget holders. The management of the contract after tendering will then need to be the responsibility of a suitable budget manager.
- 2.5 Where contracts are not in place and the procurement of goods and services is occurring on an 'as required' basis the Procurement Manager will assess if a framework needs to be put in place or another contract within the Council can satisfy the requirement. Purchasing outside of a formalised contract is not permissible.

3. ORDERING GOODS AND SERVICES

- 3.1. Goods, works and services must be ordered from the contracted Council supplier, a buying consortium (e.g. ESPO, PRO5, GPS (formerly Buying Solutions) or through a public sector framework available to the Council.
- 3.2. In the event that a buying consortium or other public sector framework is selected as a means of delivering goods or services the officer must follow the award procedures set by the framework and observe any conditions (e.g. mini-competitions).
- 3.3. Where a supplier cannot be identified, for example; a new requirement, then the Procurement Manager must be notified.
- 3.4. Unless impractical, written instructions (fax and email are also acceptable) should be transmitted to contractors and suppliers. Ideally the purchase order should be used for this purpose.
- 3.5. Heads of Service must agree the officers within their Service Areas that are permitted to authorise orders and their order limits.
- 3.6. Instructions should specify clearly the amount and quality of goods or services to be supplied, the date for delivery and the price to be paid (showing any discounts off regular prices). Ideally the purchase order should be used for this purpose.
- 3.7. The Orders System will be used, to maintain a record of goods/services ordered, through which Service Areas can verify:
 - The receipt of goods/services ordered;
 - The authorisation of payment (so as to prevent duplicate payments).
- 3.8. Where orders are placed on a website through a compliantly let agreement this will be deemed to be the method by which records of the goods/services is maintained.
- 3.9. Where it is not practical to issue a written instruction for a service (e.g. continuing supply arrangements such as electricity, gas, telephone etc) the Orders System must be used so that records are maintained of the expected costs of supply (unit costs etc.) and accounts which have been authorised for payment.
- 3.10. Goods or services should be ordered in a timely manner to reduce the need to hold stock. This will be a balance between minimising stock levels and reducing excessive deliveries.
- 3.11. Select lists will no longer be held by the Council. Where necessary these will be replaced by framework agreements valid for a period not to exceed 4 years (unless there are sound grounds for a longer period e.g. investment from the supplier).
- 3.12. All gifts and hospitality must be in line with the requirements of the member and officer Codes of Conduct.

4. DISPOSAL OF ASSETS

- 4.1. The approach to be taken in respect of the disposal of assets will depend upon the nature and estimated value of the asset.
 - 4.1.1. In the first instance any asset deemed to be of no further use should be offered for re-use within the council. This can be done via the internet or email to service area managers.
 - 4.1.2. For assets worth £19,999 and below Managers should 'have regard' to the need for value for money and equity. Assets should not be sold without competition unless it is clearly sensible to do so. The reasoning must be recorded by the Senior Manager. In cases where competition is appropriate, at least two written quotations should be received or the method of electronic auction may be used (e.g. EBay). There is a separate internal guidance on the disposal of computer equipment that should be followed in appropriate circumstances, this is available from ICT.
 - 4.1.3. For assets worth £20,000 and above the Executive approval should be sought detailing the asset and the proposed method of disposal. The method of disposal may be either by formal tender (as described in sections 9-13) or by auction (e.g. EBay or property/land auction)
- 4.2. In the event that electronic auction is selected then this must be through a Council account, under NO circumstances should personal accounts be used.
- 4.3. If a low value asset cannot be sold then consideration should be given as to its suitability for use by a charity or other voluntary organisation. In the event that this is deemed a suitable route to disposal the Senior Manager is responsible for the disposal.
- 4.4. Disposal of land does not normally fall under the Public Contracts Regulations. However, if the disposal is linked to further outputs or developments then there may be a requirement to comply with the regulations. In considering the proposal to dispose of land or property it is necessary to follow the Council's Principles for Strategic Asset Management.

5. EXCEPTIONS TO CODE OF PROCUREMENT PRACTICE

- 5.1. An exception to the Code of Procurement Practice is a permission to let a contract without complying with one or more of the procedures laid in this document. An exception may be granted subject to conditions but cannot be granted where a breach of UK or EU legislation may be incurred.
- 5.2. An exception may be sought when:
 - 5.2.1. It is not practicable or advisable by reason of emergency to seek competitive tenders;
 - 5.2.2. The Council has followed the procedures but the process has not resulted in a suitable supplier being engaged due to reasons beyond

officers' normal control and defined responsibility resulting in an interim supplier being appointed to ensure continuity of service while the procurement process reviewed.

5.2.3. There are exceptional circumstances in which it would not be in the Council's best interests to follow the tender or quotation procedure;

5.3. In the event that a Senior Manager decides that paragraphs 5.1 and 5.2 apply, in the first instance the agreement of the Procurement Manager must be sought. If the Procurement Manager is still in agreement with the decision then a report must be submitted (in advance of the decision) to the Executive, explaining the circumstances and seeking approval on the course of action. It should be noted that 'lack of time' is not a reason for this application under current legislation.

5.4. Exceptions not requiring approval by Executive are:

5.4.1. Renewal of software licenses or other commodity items where the supply is restricted to either the original supplier or their selected re-sellers, and competition does not affect the price paid owing to way the market operates and/or the need for compatibility.

5.4.2. Where officers have followed the procedure for 3 quotes but are unable to obtain 3 quotes. This may be due to lack of market response or where there is only a single supplier in the market place (e.g. Highways approved single supplier for banners on street lamps). In this case the approval request should still be submitted to the Procurement Manager using the 3 quote form with supporting evidence of the exception.

5.4.3. Memberships, publications and subscriptions that are only available to purchase from a single organisation e.g. membership of a housing advisory organisation.

5.5. Grants, payments to parish councils or similar bodies (where the Council is body responsible for collection of funds via council tax), payments to BID's (Business Improvement Districts) (where the Council is body responsible for collection of funds via business rates), staff salaries and any statutory taxes are not covered by this code as they are not the procurement of a service, works or goods.

6. PRE-PROCUREMENT PROCEDURE

6.1. Before commencing any procurement activity, it is essential that the Authorised Officer leading the procurement has identified the need and fully assessed any and all options for meeting those needs. Consideration shall be given to the Council's Procurement Strategy as appropriate.

6.2. Before undertaking a procurement the authorised Officer shall:

6.2.1. Consider all other means of satisfying the need (including recycling and reuse where appropriate);

6.2.2. Consider whether there is an existing appropriate compliant pre-tendered contract available. This may be either a contract let by

another public body or a framework agreement let by a purchasing consortium (e.g. GPS, PRO 5, ESPO). It may be necessary to examine a number of frameworks and contracts to find the best value solution;

- 6.2.3. Consider joint working with one or more other local authorities. Sharing knowledge and resources while aggregating spend should be of benefit. The Procurement Manager can establish contact with other Procurement Officers at neighbouring councils to assist with this.
- 6.2.4. Establish a business case for the procurement;
- 6.2.5. Consider the criticality of the supply and/or service with regard to business continuity;
- 6.2.6. Consider and define the need for a confidentiality document either at the initial outset of the tender phase and/or at the contract stage.
- 6.2.7. Carry out any market testing required in order to ensure that the requirement can be met by potential suppliers.
- 6.2.8. Consider if any Social Value can be obtained through the service contract as per the Social Value Act 2011. If so, then the necessary consultation must be included in the pre-procurement stage.
- 6.2.9. Seek the advice, guidance and approval of the Procurement Manager.

7. ESTIMATING THE VALUE OF CONTRACT

- 7.1. The Council should make best use of its purchasing power by aggregating purchases wherever possible. Particular supplies, services and works shall not be split (either in reducing the contract term or dividing the contract into smaller portions) in attempt to avoid the applicability of these contract standing orders or the Public Contracts Regulations.
- 7.2. Contract value should be estimated using the total cost of ownership (to include full costs of acquisition, use and disposal) for the term of the contract.
- 7.3. The contract value is important as it governs the type of contract and the route chosen to source the supplier. Value also impacts on the budget.
- 7.4. Particular attention should be paid when employing Consultants that the scope and length of contract are clearly defined. A reasonable contingency should be applied to the project budget to cover additional unforeseen expenditure. When employing Consultants it is important to monitor the contract closely to avoid escalation of costs through follow on work. See section 12.
- 7.5. The value of a contract to Service Area should not be viewed in isolation as the regulations are concerned with the total value of a commodity to the Council as a whole.

7.5.1. Service areas need to be aware of other users of similar services within the Council so as to ensure efficiency by aggregation of requirements.

7.5.2. A service area acting in isolation could potentially cause the Council to be in breach of the Regulations. The Procurement Manager can advise of the likelihood of this prior to the commencement of the procurement process.

8. CONTRACT TYPES

8.1. Contracts will be defined according to the estimated value.

8.2. The estimated value will be for the term of the contract. This may be a fixed term for project type work. Only in exceptional circumstances should this exceed 4 years.

TYPE	CONTRACT PRICE	PROCEDURE
1	<£5,000	Senior Manager to arrange directly in consultation with the Procurement Manager. Regard must be given for best value.
2	£5,001 -£19,999	Senior Manager to obtain at least three written quotations.
3	£20,000-EU Threshold	Contract opportunities above £20,000 should be advertised extensively (electronically) to ensure that as wide a market as possible has the opportunity to respond with formal tenders (as detailed in 9-11) to be sought in accordance with the tendering procedures.
4	>EU Threshold	Tendering in accordance with EU procurement directive. Threshold values can viewed at http://www.bipsolutions.com/html/thresholds.htm

8.3. In the event that the minimum number of quotations or tenders cannot be obtained for reasons of insufficient suppliers within the market, the Senior Manager in conjunction with the Procurement Manager will have the final decision in whether to proceed or to redesign the specification.

9. TENDERING PROCEDURES

9.1. Subject to any overriding statutory enactment this tender procedure applies in relation to any and all type 3 and 4 contracts.

9.2. For type 4 contracts the relevant procedure (open, restricted, negotiated or competitive dialogue) needs to be identified prior to advertisement;

- Open Procedure – where only a limited number of potential suppliers are likely to respond.

- Restricted Procedure – where there are potentially many suppliers likely to respond and a pre-tender selection is required.
 - Negotiated Procedure – for complex tenders where neither of the above is suitable.
 - Competitive Dialogue – for highly complex tenders where none of the above are suitable or the solution cannot easily be identified.
- 9.3. Where possible tenders will be let as framework agreements for use by other Local Authorities within the WMREIP (West Midlands Regional Improvement and Efficiency Partnership) area.
- 9.4. All tender opportunities must be advertised. Advertisements should be sent through the 'Project' software at www.delta-esourcing.com Low value tenders will be advertised through Contracts Finder, while those above EU thresholds will be sent to the OJEU. The advertisement shall contain particulars of the contract, how documents can be accessed and the date and time for return of the completed documents.
- 9.5. Documents should be made available through the secure document exchange 'vault' at www.delta-esourcing.com
- 9.6. Documents should include (for 2 stage tendering these will be split across the Pre –Qualification Questionnaire (PQQ) and the Invitation to Tender (ITT)):
- A description of the goods and/or services required;
 - The procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders. Note for type 4 contracts minimum timescales apply depending on the procedure selected;
 - A specification and detailed information the use of selection and award criteria instructions on whether any variants are permissible;
 - A requirement to return the last 2 years accounts;
 - A questionnaire regarding the company structure, its policies and procedures and the requirement to submit supporting evidence.
 - If the supply/service is business critical then the requirement for a rapid response to a call must be incorporated;
 - The Council's terms and conditions of contract (see 11.2);
 - The evaluation criteria (see 9.7). This should also include any stages to the selection e.g. interviews and possible dates. Note that selection and award criteria are separate and require different information;
 - Pricing mechanism and instructions for completion;
 - Whether the Council or supplier is of the view that TUPE may apply;
 - Form and content of method statements to be provided;
 - Rules for submitting of tenders.
 - Any further information which will inform or assist tenderers in preparing the tender.

The Council's standard template documents should be used to assist.

- 9.7. The evaluation criteria should be clear and any sub criteria with weightings identified.

9.7.1. Suggested **selection** criteria include;

- Financial stability assessed from the last 2 years accounts. This assessment will be carried out by Finance and will include where possible credit checks;
- Any formal views of referees;
- Health and Safety Policy. All contractors must have a policy relevant to the business carried out for the protection of its employees and the general public;
- Environmental Management system commensurate with the type and value of the work to be carried out. Actively working to reduce environmental impact during the course of the contract execution;
- Disaster recovery procedures and out of hours availability should be assessed for key services such as those involving property;
- Equal opportunities and diversity policies commensurate with the type and value of the work to be carried out. As a minimum a good understanding and willingness to align with the Council's own policies will be requested.

9.7.2. Suggested **award** criteria include;

- Price
- The experience of the contractor in relation to the contract to be let, such as references or CV's;
- Any specific information as to how the contract will be carried out e.g. method statements;
- Specific information regarding monitoring and contract management;

9.8. Criteria used for selection at the PQQ stage (selection) may not be re-evaluated at the award stage. It is advisable to use past or current information for the PQQ stage (selection) and proposed information for the award stage.

9.9. Any clarification questions or requests for information must be communicated to all tenderers simultaneously preferably through the delta-sourcing software. This ensures anonymity among tenderers and a full audit trail of communication.

9.10. Requests for extensions of the tender timetable may be granted in exceptional circumstances in consultation with the Procurement Manager, (and where the procurement is a project, by agreement with the project board). In this case all tenderers must be informed of the extended deadline.

10. CUSTODY, OPENING AND ACCEPTANCE OF TENDERS

10.1. Receipt of Tenders

10.1.1. Tenders will be returned to the delta-sourcing vault and will not be available for opening until after the closing date.

10.2. Opening

- 10.2.1. All tenders received by the specified time must be accessed or opened at the same time in the presence of at least two officers of the council.
- 10.2.2. Where the estimated value of the proposed contract is of type 4 then the opening process for final tenders (not the PQQ) will be as 10.2.1 however, the tender receipt form containing pricing must be sent to the relevant portfolio holder or their nominated substitute for signature.
- 10.2.3. The person responsible for the tender process must ensure that a 'Tender Receipt form' is completed, recording the companies and the tender amounts (unless this is not practical at that time, e.g. because it is a schedule of rates contract).
- 10.2.4. The 'Tender Receipt form' should be signed by at least two of the officers present to confirm the amounts and compliance of the process. Where the estimated value of the proposed contract is of type 4 then the 'Tender Receipt form' must be sent to the relevant portfolio holder or their nominated substitute for signature. Since the process is now wholly electronic and has a full audit trail, it is no longer considered necessary to have 'formal' openings for tenders.

10.3. Late Tenders

- 10.3.1. Late tenders will not be accepted unless the Council is at fault in its ability to accept documents (e.g. loss of internet access, building closure). It is the responsibility of tenderers to allow sufficient time for their documents to reach the Council.
- 10.3.2. Where information is missing from a tender, officers may clarify the omission with the bidders. Acceptance of any missing information is at the discretion of the Procurement Manager, who will first decide if this breaches any regulations. If no breaches will occur and it is of benefit to the Council then late information can be considered.

10.4. Altered Tenders

- 10.4.1. If examination of an apparently successful tender reveals any errors which affect the tender figure, the tenderer is to be given details of the error and given the choice of either confirming the tender figure or withdrawing the tender except:
 - 10.4.1.1. where the priced specification/schedule of works/schedule of rates/bills of quantities is submitted with the tender, errors in any of those documents may be corrected and tender sums amended accordingly; or
 - 10.4.1.2. by approval of the Executive after considering a report by the appropriate Senior Manager.

10.5. Evaluation of Tenders

- 10.5.1. Evaluation must be carried out in an objective, fair and transparent manner using the criteria specified in the documentation (PQQ and/or ITT).
- 10.5.2. Evaluation must be carried on a 'most economically advantageous tender' (MEAT) basis, that is a mix of price and award criteria in order to identify the best value tender for the Council. In exceptional circumstances, and for goods only, may the lowest price selection criteria be used and this will be subject to the permission of the Procurement Manager.
- 10.5.3. All calculations relating to the selection and the award process must be kept for the term of the contract. The individual score awarded must be given to the tenderer as part of the communications at the contract award stage (mandatory part of the UK Remedies Directive 2009).

10.6. Acceptance of Tenders

- 10.6.1. The Senior Manager concerned may accept the most economically advantageous tender provided that:
 - 10.6.1.1. the amount of the MEAT tender can be met from within the revenue budget (including any available virement); or
 - 10.6.1.2. the amount of the MEAT tender, together with any other scheme costs (e.g. fees, capital, salaries, post-contract services etc.) can be met from within the capital programme provision for the scheme/groups of similar schemes and that Executive approval for the capital expenditure has previously been granted,
 - 10.6.1.3. Where a tender cannot be accepted by the Senior Manager concerned because of the budget limitations of paragraphs 10.6.1.1. and 10.6.1.2. above, a report should be submitted to the Executive outlining the position and the options. It will then be a matter for the Executive to decide whether to proceed on a reduced basis, and/or whether to apply to approve or request from the Council a supplementary estimate or whether to proceed no further with the scheme.

- 10.7. The intent to award a contract must be communicated in writing to all suppliers that have declared an interest in the process. This should be done by the most rapid means – an email attachment will be the preferred method. For type 4 contract this must include details of;

- 10.7.1. Criteria for the award of the contract

- 10.7.2. The score achieved by the successful supplier and the tenderers score (broken down by each element used to evaluate the tender)

- 10.7.3. Any reasons for the decision including the characteristics and relative advantages of the successful supplier
- 10.7.4. The name of the successful supplier
- 10.7.5. The right to appeals or challenge and how this can be done
- 10.7.6. The date that the standstill period will end
- 10.8. For contracts of types 1-3 this level of information is not required. Although for transparency this may be advantageous.
- 10.9. Details of all contracts accepted and awarded shall be given to the Procurement Manager. These details will be recorded on a central register maintained by the Procurement Manager. The register will published on the Council website (items of a highly confidential nature will not be published).
- 10.10. An annual report of all contracts awarded during the preceding twelve months will be made available to the Finance and Audit Scrutiny Committee. This will be supplemented by a six monthly interim update, for information only.
- 10.11. The successful tender and material associated with the tender process (emails, letters etc) should be retained for a period of three years from the end/completion of the contract and be available for audit. Unsuccessful tenders should be retained for a period no less than 7 months from the award date.

11. FORM AND CONDITIONS OF CONTRACT

- 11.1. Senior Managers are responsible for ensuring that contracts let by them are sufficiently clear and robust to enable the Council to enforce their execution and fulfilment.
- 11.2. Contracts should be bespoke, industry standard (e.g. JCT) or made on Warwick District Council's standard terms and conditions of goods or services as appropriate.
- 11.3. Contracts should clearly state:
 - Work to be done/goods to be supplied, together with a definite quality of provision;
 - The price, any discounts and (where appropriate) a means of defining price adjustments for any subsequent amendment of requirements;
 - Time by when (or during which) the contract is to be carried out;
- 11.4. Contracts should also specify the Council's expectations of its contractors in relation to aspects of the Corporate Strategy (Fit for the Future), e.g.
 - Employment practices must reflect good practice in equality and diversity.
 - Payment terms to subcontractors should mirror those that the Council agrees to the contract holder (10 days for SME's and 30 days for larger suppliers)

- Consolidation of invoices. The council preference is for monthly billing but shorter frequencies may be acceptable depending on the supplier and the expenditure
 - All Health and Safety requirements must be met.
 - Business Continuity and emergency availability for key services and supplies.
 - Environmentally sustainable working practices - see Environmental Procurement Policy and Guidance,
 - The need, where appropriate, for equipment/systems to comply with EU requirements,
 - Performance and complaints monitoring and reporting.
- 11.5. Senior Managers should also consider whether the contract conditions should include the following (this will depend on the nature of the contract and if the purchase is from revenue or capital funds):-
- the provision of a performance bond or parent company guarantee for contracts above £200,000 in total value. (The expected norm is that a bond of 10% of the value of the contract (or its annual value where the contract relates to continuing service) is obtained. The Head of Finance should be satisfied as to the financial stability of any proposed bond provider).
 - the provision for liquidated damages to be paid to the Council in the event that the contract is not completed in the time specified. For contracts of over £50,000 the expected norm is that provision for liquidated damages should be made.
- 11.6. Contracts should provide powers for the Council to cancel the contract and recover any resulting losses from the contractor in the event that the contractor, its employees or agents (with or without its knowledge):
- 11.6.1. improperly offers or gives anyone anything or benefit in order to influence the way in which any contract with the Council is given, completed or carried out; or,
- 11.6.2. commits any offence under the Prevention of Corruption Acts 1889 to 1916, section 117(2) of the Local Government Act 1972 or any consolidating or amending legislation.
- 11.7. All contracts should be duly signed by both the Council and supplier before any services are commenced or goods ordered.
- 11.7.1. Legal advice must be sought before any contract can be put forward for signing.
- 11.7.2. Only those officers and managers identified as approved may sign and execute contracts on behalf of the Council. Contracts of type 1-3 may be signed a Senior Manager where a Senior Manager is defined as the Head of Service (or any officer above this level) or their nominated authorised substitute. For contracts of type 4 only officers that are members of CMT or the S151 officer may sign. Where contracts are to be executed as a deed, under the scheme of delegation reference G(1), these can only be signed by the Chief Executive or the Deputy Chief Executives.

12. APPOINTMENT OF CONSULTANTS

- 12.1. It is recognised that the appointment of consultants cannot always be carried out on the basis of an assumption of a pre-defined quality of service. The reality is that consultants will have a range of different skills and expertise.
- 12.2. The choice of a consultant will, generally therefore, be a mixture of price and (subjective) views of their ability to deliver to a particular brief.
- 12.3. This part of the Code deals with the special needs of how this subjective element can be brought into the selection decision.
- 12.4. Appointment of consultants falls into two categories:
 - 12.4.1. Those for which there is a regular flow of work - such as building consultants (architects, quantity surveyors, structural engineers, mechanical and electrical engineers, standard Estate Agency work, geo-technical advisers etc).
 - 12.4.2. Those for which usage is essentially infrequent. These might be anything from public relations, financial services, specialist civil engineers, specialist Estate Agency work, etc.
- 12.5. Regular Consultants (e.g. building consultancy services)
 - 12.5.1. Framework contracts for professional consultancy services, fully compliant with the Public contracts Regulations and EU Regulations will be let on a 4 yearly basis.
 - 12.5.2. Each consultancy service will hold between 5 and 8 approved suppliers. The suppliers will have been approved on the basis of the OJEU tender process and terms of engagement will have been agreed.
 - 12.5.3. When a consultant is required for a specific project an invitation to tender will be issued to all those on the framework capable of fulfilling the need.
 - 12.5.4. The most economically advantageous tender will be awarded the consultancy contract. This may not be the lowest price but a combination of price, availability and skill or other such criteria as specified in the ITT (but not previously used in the pre-selection criteria).
- 12.6. Ad-hoc Consultancy
 - 12.6.1. It is impractical to maintain approved lists of consultants for those activities for which use is infrequent.
 - 12.6.2. All contracts involving consultants must be calculated to include a realistic estimate of cost with a level of contingency included. It is important that follow on work is avoided and contract values are calculated as described in 7.2. If follow on work is likely, the value

of this needs to be assessed and reflected in the contract value, with the contract documentation clearly spelling out the situation.

- 12.6.3. Where the consultancy cost estimates are close to the EU threshold values the contract should be tendered as EU compliant. This may be achieved by using one of the consultancy frameworks let by buying consortia such as ESPO or GPS or by the full tender process. Preference will be given to the use of already tendered frameworks by buying consortia and will only be tendered if the need cannot be met by one of the available frameworks. The contract notice should be issued showing the range of the estimates of the contract price. This will ensure that no challenges can be made should the costs exceed the threshold values.

13. POST PROCUREMENT PROCEDURE & CONTRACT MANAGEMENT

- 13.1. Contract management is the process which ensures that both parties to a contract fully meet their respective obligations as efficiently and effectively as possible, in order to meet the business and operational objectives required from the contract and in particular to provide value for money.
- 13.2. Contract management should always be employed during the term of a contract.
- 13.3. There should be a plan for managing the contract to ensure a focus across the organisation on delivering value for money from service contracts.
- 13.4. Regular meetings should be in place to allow the exchange of information between the supplier and the contract manager. It should be noted that this a two-way process and that both parties should be looking to develop the contract for mutual benefit (taking care not to fundamentally change the specification of the contract that was awarded).
- 13.5. It is not important that all review meetings are formal although at least one formal meeting per annum is to be encouraged.
- 13.6. It is important to establish KPIs to measure and drive the performance of suppliers effectively. KPIs should be SMART and not onerous. Where KPIs cannot be established there should be agreement on the mechanism for measurement of the performance of the supplier.
- 13.7. There should be a detailed agreement of the required outputs and thus the expected performance and quality of service to be delivered.
- 13.8. Always monitor whether the service is being delivered according to the specification, and that the costs of the service are no higher than expected.
- 13.9. There should be continuous assessment and management of the risks to service delivery. This is to ensure that business continuity plans are in place to ensure critical services continue to be delivered through a range of contingencies.

- 13.10. The contract manager should continue to assess service delivery against the business case throughout the life of the contract.
- 13.11. The contract manager should regularly (annually and/or prior to any extension or renewal) check the Council is continuing to achieve VFM by regularly testing for example price benchmarking or market testing.
- 13.12. Depending on the precise nature of the contract, administration and change management activities may focus on: Cost monitoring and forecasting, ordering, payment and budget monitoring procedures, Resource management, forward planning, management reporting systems, asset management.
- 13.13. Always ensure that the supplier has issue management procedures in place, including escalation procedures for when operational problems cannot be resolved, and that these are used when needed. Any issues or problems should be reported to and monitored by the contracts manager as part of the management information.
- 13.14. In the event of poor supplier performance, the contracts manager should make financial deductions where relevant (the contract should have provision for this). This should only be employed where other mechanisms for resolution of the performance have failed to achieve the required standard.
- 13.15. It is permissible to work with suppliers on a voluntary basis, after contract award, to improve their environmental and/or social performance. In addition to relevant social and environmental requirements included in the contract. For example, putting in place measures to reduce energy use or recycle packaging.
- 13.16. A contract may only be extended in accordance with the provisions set out in the original advertisement. Extensions of contracts beyond the provisions set will be in contravention to this Code and the wider EU legislation.

14. NON-COMPLIANCE WITH THE CODE

- 14.1. Any case of non-compliance with this Code of Practice, the EU Procurement Regulations (as incorporated into English Law) must be reported immediately to the Head of Finance. A report should also be submitted to the next available Executive.

GLOSSARY

CBC	Central Buying Consortium. A buying organisation set up by a group of Local Authorities to offer complaint goods and contracts for use by other Public Sector organisations.
CMT	The Council's Corporate Management Team (comprising the Chief Executive and the two Deputy Chief Executives)
Competitive Dialogue Procedure	For tenders subject to Public Contracts Regulations. A complex procedure where the method of delivery for the supply goods, works and/or services is unknown and needs to be resolved through negotiation with suitable suppliers. Legal justification is required.
EBAY	Electronic reverse auction website.
ESPO	Eastern Shires Purchasing Organisation. A buying organisation set up by a group of Local Authorities to offer complaint goods and contracts for use by other Public Sector organisations.
EU	European Union
EU Thresholds	The levels above which goods, works and services must be tendered in accordance with the Public contracts Regulations 2006. Levels are revised every 2 years.
Framework	A type of contract that has no specified amount of goods or services but sets out how these would be purchased should the need arise.
GPS	Government Procurement Service. A buying organisation set up by Central Government to offer complaint goods and contracts for use by other Public Sector organisations.
ITT	Invitation to Tender. The main tender document sent to suppliers.
MEAT	Most Economically Advantageous Tender
Negotiated Procedure	For tenders subject to Public Contracts Regulations. A complex procedure which should only be used when no other procedure is suitable. This has largely been replaced by the Competitive Dialogue procedure.

NEPO	North East Purchasing Organisation. A buying organisation set up by a group of Local Authorities to offer complaint goods and contracts for use by other Public Sector organisations.
OJEU	Official Journal of the European Union. The publication that all contracts
Open Procedure	For tenders subject to Public Contracts Regulations. A single stage procedure under which any supplier can tender to supply goods, works and/or services.
Orders System	The finance software which is used to generate purchase orders.
PQQ	Pre-qualification Questionnaire. The first stage of a 2 stage tender process whereby a large number of suppliers are reduced to a smaller number based on pre-determined criteria, before the issue of the main tender documentation.
PRO 5	Collaboration group of purchasing organisations consisting of ESPO, NEPO, CBC and YPO. The group purchases on behalf of the public sector under the PRO 5 structure in order to maximise the benefits of aggregation.
Procurement	The process of acquiring goods, works and services from a third party supplier.
Public Contracts Regulations 2006	The procedures under which all purchases for goods, works and services above a set value must be followed.
Restricted Procedure	For tenders subject to Public Contracts Regulations. A two stage procedure under which any supplier can return a PQQ but only selected suppliers (from evaluation of the PQQ) are invited to tender to supply goods, works and/or services.
TUPE	Transfer of Undertakings of Persons Employed. The legal framework under which personnel provided for a specific contract have protection in their employment and can be transferred to a new service provider in the event the contract is awarded to a different supplier.
UK Remedies Directive 2009	An amendment to the Public contracts Regulations 2006 setting out how contractors can challenge the procurement process.
VFM	Value for money

WDC

Warwick District Council

WMRIEP

West Midlands Regional Improvement and Efficiency Partnership. An organisation set up to support the Public Sector in the West Midlands Region.