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Warwick District Council

Code of Procurement Practice (The Code)

This Code sets out how Warwick District Council will procure goods, works and services and also how the Council will dispose of its surplus assets and sell its services to other organisations

This Code should be read in conjunction with the Council's Financial Code of Practice, the Council's Procurement Strategy and the following Council specific policies

- Corporate responsible procurement policy
- Corporate responsible procurement guide
- Equality in Procurement Policy
- Ethical Procurement Statement
- SME Procurement Policy
- SME-Friendly Procurement Policy
- Social Value Policy
- Social Value Procurement Handbook
- Sustainable Procurement Policy
- Contract Management Framework

This Code includes the minimum requirements on Officers and Members when undertaking procurement. Officers and Members can exceed the minimum requirements detailed in this Code but must not go below the minimum requirements as stated.

This Code is not intended to be a detailed set of instructions on how to undertake the process of procurement. More detailed guidance on how to undertake the process of procurement is included on the Intranet.

The Code has the following objectives:

- To deliver Value for Money
- To ensure the highest standards of probity
- To ensure that the Council complies with all legal requirements.
- To protect against any allegation of acting unfairly or unlawfully
- To ensure that risks are managed
- To ensure openness, fairness and transparency.
- To support the Council's corporate aims, objectives and policies

SECTION ONE

1. Scope & Purpose

This Code aims to promote good procurement practice, public accountability, deter corruption and provide protection against allegations of impropriety.

This Code applies to;

1.1 All procurement undertaken by, or on behalf of the Council including where the Council is acting on behalf of other bodies. A relevant procurement for the purposes of this Code is any arrangement made by, or on behalf of, the Council for the carrying out of works, the supply of goods or services, the disposal of assets or the selling of Council services to other organisations. This includes contracts let as a 'Concession'

1.2 All procurements undertaken by, or on behalf of the Council irrespective of the method of funding e.g. capital, revenue, sponsorship, donations or grants from a third party unless excluded under Section 1, paragraph 2

1.3 All Officers of the Council including any temporary employees, agents and/or consultants etc. undertaking procurement on the Council's behalf.

1.4 All Members of the Council

2. Exclusions from this Code

The following contracts are excluded from this Code

2.1 Contracts of employment which make an individual a direct employee of the Council;

2.2 Agreements for the leasing or acquisition of buildings or land

2.3 Agreements for the disposal or transfer of land unless the Council exerts significant influence over what the land is used for;

2.4 Loans to banks or other financial institutions and investments made in accordance with the Council's Code of Financial Practice.

3. Non Compliance with this Code

3.1 Any case of non-compliance with this Code must be reported immediately to the Head of Finance. If the Head of Finance considers the non-compliance to be severe and/or the non-compliance places the Council under significant risk, the Officer concerned will be required to submit a report to the next available meeting of the Executive.

3.2 Failure to comply with this Code may result in disciplinary action.

4. Guiding Principles

4.1 All contracts must be let through a competitive process which meets the requirements of this Code unless an exemption has been granted or the arrangement is otherwise permitted by this Code

The following are excluded from the requirement for competition

i. Purchases made via a purchasing consortium (e.g. CCS, ESPO, YPO) catalogue or framework agreement (subject to the competition requirements associated with each individual framework agreement) accessible to the Council, however purchases above the EU Threshold will only be excluded if the purchasing consortium has let their contract in accordance with EU Procedures (where applicable) on behalf of the Council.

ii. Contracts entered into through joint working with other public bodies, where a competitive process has been followed that complies with

the equivalent Code of Procurement Practice of the lead organisation provided the collaboration has let their contract in accordance with EU Procedures (where applicable) on behalf of the Council.

iii. Collaborative proposals for joint working or shared services with other public bodies. Where the aggregate contract value of the joint working or shared services arrangement is expected to exceed the relevant EU threshold, the following conditions must be satisfied: -

i. The principal activity of the collaborative arrangement is the provision of services back to the participating bodies

ii. The collaborating public bodies when acting together exercise the same kind of control over the service as they would over an in- house service and

iii. There is no independent or private sector partner involved in the collaborative arrangement

4.2 Adequate staff resources should be identified to manage the procurement and any subsequent contracts awarded

4.3 Any contract which exceeds the relevant EU threshold (or replacement threshold set by the UK Government) must comply with any legal requirements in the Public Contract Regulations or any replacement Regulations approved by the UK Government

4.4 Procurement should be undertaken using electronic procurement systems unless otherwise agreed by the Head of Finance. Only approved electronic procurement systems should be used and advice should be sought from the Head of Finance on their use. The use of electronic procurement systems does not negate the requirement to comply with all other elements of this Code.

4.5 Comprehensive and robust records of all stages of the procurement must be maintained which support the decision to award a contract.

4.6 Contracts will be awarded based on the most economically advantageous offer to the Council (MEAT). In appropriate circumstances the lowest price (for purchases) or the highest price (for disposals) alone may be considered the most economically advantageous solution for the Council. Where it is considered that lowest price (for purchases) is in the best interests of the Council, advice should be sought from the Head of Finance prior to quotation/tender documents being issued

4.7 All procurement must be appropriately authorised in accordance with the Council's Scheme of Delegation before a procurement process commences or a contract is awarded

4.8 Sufficient budget must be available to cover the initial procurement (including any associated costs such as professional support) and to cover the expected life of the contract.

4.9 All contracts must include appropriate terms and conditions that are acceptable to the Council.

4.10 All Contracts, irrespective of value, shall clearly specify:

- What is to be supplied i.e. the specification
- The price to be paid and when
- Appropriate information/indicators to enable effective management of contract performance
- Appropriate provision for contract termination

5. Responsibilities

5.1 **General**

Unless specifically excluded by this Code, anyone undertaking procurement or contracting on behalf of the Council must comply with this Code, the Financial Code of Practice and with all legal requirements. They must also comply with any other Codes of Practice, guidance or instructions relating to procurement or contracting issued by the Head of Finance from time to time.

Corrupt behaviour is a crime and will lead to disciplinary proceedings and possible dismissal so high standards of conduct are obligatory. Anyone undertaking procurement or contracting on behalf of the Council must comply with the Council's Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. Gifts and Hospitality should only be accepted in accordance with the Council's Gifts and Hospitality policy and it will be for the individual to show that anything received was not received corruptly.

5.2 **Senior Management Team** must in relation to their Service

- Be responsible for all procurement undertaken
- Ensure all Officers comply with this Code
- Ensure that any Officer delegated to undertake procurement is sufficiently skilled and competent and completes any required learning and development;
- Ensure that all procurement and delegated decision making is within approved budgetary limits and that there are effective systems in place to manage budgets on an on-going basis
- Ensure there are appropriate contract management arrangements in place for all contracts let
- Provide any information requested by the Head of Finance regarding their procurement and contracts.
- Ensure there is a comprehensive documentary record of all Quotation/Tender exercises which will include correspondence/documentation supporting the final award decision.
- Agree contract variations for their Service in consultation with the Procurement Service where required,
- Ensure that in any procurement process involving the transfer of staff into or out of the Council that all applicable statutory obligations regarding TUPE are complied with.
- Where a contract involves the transfer of staff between existing and new providers, for overseeing the TUPE process and supporting outgoing and incoming providers to ensure a smooth transition
- Ensure that all procurement and delegated decision making is within the Council's Scheme of Delegation.
- Consult with the Corporate Management Team as appropriate where any one of the following apply:
    - An innovative approach to procurement is proposed which is significantly different to current practice;
    - A proposed procurement is likely to have a significant impact on the Council's workforce;
    - A proposed contract exceeds the approved budget by £10,000 or more, exceeds the time for completion or is incurring significant risks not initially identified
- Maintain the master 'Contracts Register' on behalf of their Service which includes all live contracts with an aggregate value of £5,000 or above.

- When requested, provide the Head of Finance with details of all proposed contracts with an anticipated aggregate value of £25,000 or above

5.3 **The Head of Finance** shall:

- Maintain the Code of Procurement Practice and all supporting procurement related guidance;
- Provide appropriate professional advice, guidance, training and support to Officers and Members on all procurement related matters.
- Agree Exemptions up to the value of £50,000
- Report all agreed exemptions to the Executive on at least a 6 monthly basis
- Approve Procurement Initiation Documents (PIDs) where these are required by this Code
- Maintain and publish a forward contract plan showing all potential procurement opportunities with a total value of £25,000 or above
- Consider any declarations of interest and determine whether the individual making the declaration can continue to be involved in the procurement process or contract award
- Nominate other officers to exercise all or part of these powers on their behalf

5.4 **Officers** shall

- Comply with the requirements of this Code and observe any guidance or instructions relating to procurement or contracting issued from time to time by the Head of Finance
- Ensure that any procurement supports the Council's wider commissioning, business plan and policy objectives
- Ensure they have all necessary approvals before commencing any procurement process or awarding any contract;
- Ensure that where required, a PID is approved by the Head of Finance prior to any procurement activity commencing;
- Ensure any necessary legal, procurement, finance, HR, ICT, risk management, technical support etc. is identified and engaged in good time;

5.5 **Elected Members** shall

- Declare any potential conflict of interest to the Head of Finance
- Agree Exemptions with a value of £50,000 and above or below this value when referred by the Head of Finance
- Agree requests to supply services to other organisations with a value of £10,000 and above
- Agree the disposal of assets expected to be worth £50,000 and above,
- Consider reports relating to procurement and contracting submitted by the Head of Finance

6. Exemptions from this Code

6.1 Any requirement of this Code may be waived with the consent of the Head of Finance and where required, the Executive subject to any legal constraints

6.2 Obtaining an Exemption

- All requests for an exemption must be submitted on the Exemption Request form and be submitted in accordance with the Exemption process
- The Exemption request must clearly set out the reasons for requesting the exemption and include sufficient justification to support the request including how the proposal complies with any applicable law, demonstrates value for money and supports the Council's objectives
- Where the total contract value is below £50,000, the Head of Finance may agree the exemption with the exemption retrospectively reported to the Executive.
- Where the total contract value is £50,000 or above or where, in the opinion of the Head of Finance, the agreement of an exemption might increase the Council's risk profile to an unacceptable level, the Exemption must be agreed by the Head of Finance and the Executive, prior to any ~~work~~ *contract* being *entered into* ~~carried out~~.

6.3 Obtaining an Exemption in an Emergency Situation

- Where an exemption is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services the Head of Service or Senior Management Team member may make all necessary and reasonable arrangements to manage the emergency, Full details must be reported to the Head of Finance as soon as practicable following the event.
- Any contract entered into under the emergency provisions should be for the minimum duration required to remove the immediate risk to persons or property or to reduce the disruption to Council services to a manageable level.
- Any contract awarded under the Emergency Exemption provisions must not be let for a term longer than 6 months without the prior approval of the Head of Finance and the Executive.
- Any contract entered into under the emergency provision must be reported to the Executive at the next available opportunity

SECTION TWO

PROCUREMENT PROCESS

The Council has 5 different levels of contract as detailed in the table below. Section 2 sets out in more detail the requirements when dealing with a specific procurement. Further guidance is available via the Intranet.

Contract Type	Estimated Contract Value
1	£1 - £9,999
2	£10,000 - £24,999
3	£25,000 - £49,999
4	£50,000 – EU threshold for Goods and Services (Note – this includes projects covered by the Light Touch Regime and Works even though the thresholds for Light Touch Regime and Works are higher than the threshold for Goods & Services)
5	> EU threshold for Goods and Services

1. Steps Prior to Purchase

1.1 Before commencing any procurement, Officers must

- Assess the need for the expenditure
- Define the objectives of the procurement
- Calculate the estimated Total Value of the contract
- Ensure that appropriate approval is in place to commence any procurement process
- Ensure there is sufficient budget available which covers the whole-life financial commitment being made (including any consultant's or other external charges or fees);
- Ensure the Council's requirements for IT system security and data security (GDPR) are satisfied where appropriate
- Ensure any necessary legal, procurement, finance, HR, ICT, risk management, technical support etc. is identified and engaged;
- Ensure resources with the necessary skills and capacity to manage the contract once it has been let;

1.2 For all contracts above the applicable EU threshold for Goods and Services (this includes any projects for 'Works' or projects covered by the 'Light Touch Regime') Officers must in addition to Section 2 point 1.1: -

- Comply with any legal requirements in the Public Contract Regulations or any replacement Regulations approved by the UK Government
- Comply with the Council's Procurement Gateway Procedure
- Consider any contract management information and lessons learned from the previous contract where this exists
- Consult with stakeholders, users and the supply market (in accordance with Section 2 point 5 of this Code) where appropriate
- When procuring 'Services' consider whether and how through the procurement, improvements to the economic, social and environmental wellbeing of the area might be achieved (Social Value)
- Carry out an options appraisal to decide the best way to achieve the Council's objectives, including internal or external sourcing, partnering,

collaborative procurement with another public body, recycling, reuse etc.
- Produce a business case and have this approved by a member of the Senior Management Team
- Assess the potential risks and how to manage them
- Submit a fully completed PID for approval by the Head of Finance
- Agree the form of contract to be used and the terms and conditions that are to apply to the proposed contract
- Consider the need for a performance bond and/or parent company guarantee.

1.3 All contracts or purchase orders issued by the Council shall:
- Be evidenced in writing;
- Refer to a contract reference number and/or contain a purchase order number
- Include appropriate Terms and Conditions
- Support the Councils wider priorities and policy objectives
- Include a requirement for the supplier to comply with all relevant statutory requirements

2 Declaration of Interest / Conflict of Interest

2.1 Officers and Members must declare any potential conflict of interest when requested to do so by the Head of Finance. This may take the form of an annual declaration and/or a project by project declaration

2.2 Any Officer or Member who has a direct or indirect interest in any procurement or proposed contract shall declare their interest in writing to the Head of Finance. The Head of Finance will decide whether the reported interest is considered sufficient to exclude the officer or member from being involved in the procurement process or the awarding of any contract.

3 Contract Value

3.1 The procurement procedure will usually be determined by the estimated aggregate value of the contract. The aggregate value of the contract is calculated as follows

- Initial term of the contract plus any extension periods X estimated annual contract value or
- For one off requirements the available agreed budget
- For concession contracts the estimated value of the turnover of the concessionaire generated over the duration of the contract

3.2 Contract values must not be distorted or disaggregated in order to avoid the requirements of this Code or alter the procurement process.

3.3 Where the estimated aggregate value of the contract exceeds the relevant EU threshold, an EU compliant procurement process should be undertaken

4 Use of Existing Council Contracts

4.1 Before commencing a procurement process and/or seeking to let a new contract, Officers must check whether the Council already has a suitable contract in place which could satisfy the requirement. Where a suitable

contract exists, that contract must be used unless agreed otherwise by the Head of Finance

5. Pre-Tender Market Engagement and Consultation

5.1 Officers may consult potential suppliers prior to the issue of an Invitation to Quote/Tender about the nature, level and standard of the supply, contract packaging and other relevant matters. Records must be kept of this consultation.

5,2 Officers must not, once any consultation period under 5.1 has ended seek or accept technical advice on the preparation of the actual Invitation to Quote/Tender from anyone who may have a commercial interest in bidding for the contract as this may prejudice the equal treatment of all potential bidders and distort competition.

6. Framework Agreements

6.1 Contracts based on framework agreements may be awarded by either

6.1.1 Applying the terms laid down in the framework agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or

6.1.2 Where the terms laid down in the framework agreement require the re-opening of competition or the terms laid down in the framework agreement are not precise enough, by holding a mini competition in accordance with the following procedure:

- Inviting all organisations within the framework agreement who are capable of delivering the contract to submit written quotations/tenders;
- Fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract

7. Use of Existing Framework Agreements

7.1 Before undertaking a procurement process, Officers shall consider whether there is an existing pre-tendered framework agreement available. This may be a framework agreement let by another public body or by a purchasing consortium (e.g. CCS, ESPO, YPO). It may be necessary to examine a number of framework agreements to identify the best value solution for the Council

7.2 Existing framework agreements may be used where these have been established by an appropriate contracting authority and the Council can legitimately and legally access them

7.3 Where the use of an existing framework agreement is identified as the appropriate procurement route, the Officer will, in conjunction with the Procurement Service, agree the appropriate procedure for accessing the framework agreement

7.4 When using an existing framework agreement, Officers must not invite additional suppliers to bid which are not included on the Framework agreement

7.5 The use of an existing framework agreement does not remove the requirement to comply with all other elements of this Code

8. Creating Council Framework Agreements

8.1 Officers may establish framework agreements for goods, works or services. For any contracts where the aggregate contract value is likely to exceed the relevant EU threshold, the framework agreement must be established in accordance with the requirements of the Public Contracts Regulations. Where Services are considering establishing a framework agreement, they must seek advice from the Procurement Service, before commencing the procurement process

8.2 The duration of a framework agreement shall not exceed 4 years except in exceptional circumstances.

8.3 Where Services are considering establishing a framework agreement for longer than 4 years in duration, the Officer must seek advice from the Procurement Service and receive written agreement from the Head of Finance before commencing the procurement process

9. Awarding Contracts based on Framework Agreements

9.1 Contracts should be awarded to the bidder submitting the best quotation/tender on the basis of the award criteria set out in the framework agreement

9.2 Where the contract value exceeds £5,000 Officers should include details on the master 'Contract Register'

9.3 Where the contract value is £25,000 or above, a Contract Award Notice should be placed on Contracts Finder

9.4 Where the contract value exceeds the relevant EU threshold, Officers should observe a 'standstill period' before finalising the award of the contract

9.5 Where the contract value exceeds the relevant EU threshold a Contract Award Notice should be placed in the OJEU (or any replacement UK requirement)

10. Inviting Quotations and Tenders (Contract Types 2 - 5)

10.1 All Invitations to Quote/Tender shall, as a minimum:

- Be conducted electronically using the Council's approved E-Procurement system or another E-Procurement system approved by the Procurement Service unless agreed otherwise by the Head of Finance
- Be advertised in accordance with the requirements of this Code
- Be issued to at least 3 potential suppliers unless: -
  - There are not 3 suppliers in the market or
  - Where required by the Public Contract Regulations to invite more than 3 suppliers
- Include clear instructions on how and where quotations/tenders are to be returned
- Include the date, time and process for the return
- Include appropriate terms and conditions
- Include a clear specification which describes the Council's requirements and expected levels of quality
- Specify the time limit (if any) for delivery;
- Describe the criteria and process that will be used to evaluate the bids including any question weightings and sub-criteria that apply
- Include a robust and proportionate framework for managing the performance of the contract capable of evidencing that the contract is delivering the required business benefits/outcomes.
- Include any supplementary information required by potential bidders to enable them to submit clear and concise bids,
- Require the completion and return of a Form of Tender and certificates relating to canvassing and non-collusion.
- When establishing a framework agreement, a clearly defined process shall be included outlining how call off contracts are to be awarded see Section 2 Point 8 of this Code

11. Advertising Requirements

11.1 All procurements with an estimated aggregate value below £25,000 are not required to be publicly advertised

11.2 All procurements with an estimated aggregate value of £25,000 or above must be advertised on the Council's E-Tendering portal and on Contracts Finder

11.3 All procurements expected to exceed the applicable EU threshold must be published on the Council's E-Tendering portal, Contracts Finder and in the OJEU (or any replacement UK requirement)

11.4 Advertisements for contracts exceeding the relevant EU threshold should not appear on the Council's E-Tendering portal or on Contracts Finder until after they have appeared in the OJEU (or any replacement UK requirement).

12. Management of Quotations and Tenders (Contract Types 2 - 5)

12.1 Bidders must be given an adequate period of time in which to prepare and submit a quotation/tender consistent with the complexity of the procurement. Where the contract value is expected to exceed the applicable EU threshold, the Public Contract Regulations require specific time periods to be observed depending on the procurement procedure being followed.

12.2 Providing clarification on any aspect of the quotation/tender to bidders during the bidding period is permitted. All clarification requests should be in writing and therefore Officers must not accept or respond to verbal clarification requests. The clarification questions asked (anonymised to ensure the integrity of the bidders) together with the Council's response must be made available to all bidders

12.3 Officers may extend the deadline for submission of quotations/tenders where it is considered appropriate to do so. Where the deadline for submission of quotations/tenders is extended, all bidders will be notified of the extension and any bidders that have already submitted a quotation/tender shall be given the opportunity to re-submit.

12.4 Quotations/Tenders will be submitted by bidders via the Council's approved E-Tendering portal unless alternative arrangements have been agreed by the Head of Finance.

12.5 A formal opening ceremony will take place and no quotation/tender submissions will be available to evaluate until after the opening ceremony

12.6 Late quotations/tenders will not normally be accepted. Officers must obtain the agreement of the Head of Finance prior to accepting any late quotations/tenders

13. Evaluation of Quotations/Tenders (Contract Types 2 - 5)

13.1 Officers are responsible for ensuring that all bids are suitably assessed. The assessment process shall, as a minimum, establish that all potential bidders have sound economic and financial standing and sufficient technical ability and capacity to fulfil the requirements of the Council

13.3 Evaluation of bids must be undertaken in accordance with the evaluation methodology and evaluation criteria described in the quotation/tender document.

13.3 Evaluators are required to evaluate bids independently and provide comprehensive comments in support of their evaluation.

13.4 Where less than 3 quotations/tenders are returned, the evaluation can still proceed. Prior to awarding any contract in these circumstances, Officers should be confident that the bids received secure best value for the Council.

13.5 Where only one quotation/tender has been received, the Head of Service in conjunction with the Procurement Service will agree whether it is

appropriate to award a contract or to abort the procurement and consider alternative options.

13.6 If the quotation/tender evaluation reveals any errors which affect the quotation/tender price, the bidder will be provided with the details of the error and given the option of confirming the price as submitted or withdrawing from the procurement process. If an Officer considers an alternative approach to be in the best interests of the Council, Officers must receive prior approval from the Head of Finance

13.7 Where information is missing from a quotation/tender, Officers may clarify the omission with the bidders with the prior agreement of the Procurement Service.

13.8 Seeking clarification of a submitted quotation/tender whether in writing or by way of a meeting is permitted. However, discussions with bidders after submission of a quotation/tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post tender negotiations) must be the exception rather than the rule. In particular, such negotiations must not be conducted during an EU Procedure (other than within the provisions of the EU Competitive with Negotiation (CWN) and Competitive Dialogue (CD) procedures) without the prior agreement of the Head of Finance

13.9 If post tender negotiations appear necessary you should take advice on whether negotiations are permissible. Normally such negotiations should be undertaken with all those bidders who have met the selection criteria in the original procurement process. During negotiations, the Council's requirements set out in the original procurement process should not be substantially altered.

13.10 Apart from the debriefing required or permitted by this Code, the confidentiality of quotations/tenders and the identity of bidders must be preserved at all times and information about one bidder's response must not be given to another during the evaluation process. Notwithstanding this, Officers should be mindful of the Council's duties under the Freedom Of Information Act and in some circumstances some disclosure may be required to comply with those

14. Acceptance of Tenders

14.1 The table below sets out the approvals required. They apply equally to contracts that may be awarded through negotiation as they do to those awarded through competition. They also apply to contracts intended to be awarded from collaborative procurement exercises or framework agreements including those let by organisations such as CCS, ESPO, YPO etc.

Contract Type	Approval To Award a Contract
1	Commissioner or above
2	Commissioner or above and Procurement Service
3	Commissioner or above and Procurement Service
4	Commissioner, SMT member and Procurement Services
5	Commissioner, SMT member and Procurement Services

14.2 Where external funding has being provided to support the budget for the procurement, e.g. ERDF, Heritage Lottery Fund, Friends Groups etc. acceptance of the award decision may need to be obtained from the external funder prior to a tender being accepted.

14.3 Tenders may be accepted provided that the tender sum and any on-going financial commitments can be met from within the available budget or in relation to capital expenditure, the tender sum together with any other scheme costs (e.g. fees, capital, salaries, post-contract services etc.) can be met from within the capital programme provision and that Executive approval for the capital expenditure has previously been granted,

14.4 Where a tender cannot be accepted because of budget limitations, a report should be submitted to the Executive outlining the circumstances and the possible options. It will then be a matter for the Executive to decide whether to proceed on a reduced basis, how the shortfall will be funded in line with the Financial Code of Practice, or not to proceed with the scheme.

15. Notifying Suppliers of the Outcome

15.1 Suppliers should be notified of the outcome of the procurement process as soon as possible after approval to award the contract has been obtained and should be notified in writing.

15.2 For contracts below the applicable EU threshold (Types 1-4), the winning bidder should be advised of the outcome prior to communicating with any unsuccessful bidders. Unsuccessful bidders should be advised of the outcome once the successful bidder has indicated their willingness to deliver the contract

15.3 Contracts that are subject to the EU procedure or any UK replacement procedure must be awarded in accordance with the requirements of the Public Contract Regulations: -

15.3.1 Intention to award letters should be issued simultaneously to all bidders (successful and unsuccessful) advising them of the intention to award the contract and providing them with a 'standstill period' of at least 15 calendar days (or 10 calendar days if notification letters are sent electronically via the Council's approved E-Tendering portal).

15.3.2 The Council's standard Intention to Award letter must be used and must include the following debriefing information: -

i. The criteria for the award of the contract;
ii. The name of the successful bidder(s);
iii. The score of the bidder, together with the score of the successful bidder/s;
iv. The reason for the decision, including the characteristics and relative advantages of the successful bidder/s; and
v. Confirmation of the date before which the Council will not enter into the contract (i.e. the date the standstill period finishes).

15.4 Unsuccessful bidders wishing to formally challenge the award decision are initially required to do so during the standstill period and before the contract award is confirmed. If an award decision is questioned in writing or formally challenged by or on behalf of an unsuccessful bidder after the issue of an Intention to Award letter and during the standstill period, the Officer shall not proceed to award the contract but shall immediately inform the Head of Finance and seek the advice of Legal Services on next steps.

15.5 Subject to no formal challenges being received during the standstill period, the Officer may confirm the award of the contract to the successful bidder using the Council's Confirmation of Award letter template

16. Publication of Contract Awards

16.1 The award of all contracts with a value of £5,000 and above must be published on the Council's website

16.2 In addition, the award of all contracts with a value of £25,000 and above must be published on Contracts Finder

16.3 In addition the award of all contracts above the relevant EU threshold must be published in the OJEU (or any replacement UK requirement)

17. Contract Signing and Order Authorisation

17.1 All contracts should be in written form and the written formalities should be completed before the contract is due to start except in exceptional circumstances and only then with the prior approval of the Head of Finance

17.2 The Officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

17.3 Contracts must be signed or sealed in accordance with the Council's Scheme of Delegation

17.4 Contracts under Signature - The Officer signing the contract on behalf of the Council must ensure that he/she has the relevant authorisation to sign the contract.

17.5 Contracts under Seal - Contracts under Seal can only be signed by a member of the Corporate Management Team. A contract must be sealed where:

- The Council wishes to extend the liability period under the contract and enforce its terms for up to 12 years;
- The price to be paid or received under the contract is a nominal price and does not reflect the value of the goods or services;

17.6 Order Authorisation - Orders can only be placed by approved Officers. Senior Management Team members will authorise the Officers allowed to place orders on behalf of the Council, along with each individual's authorisation limits.

18. Document Storage & Document Retention

18.1 All signed contracts must to be stored in the Deed Store or within the electronic contract folder

18.2 Appropriate documents and records must be retained for all contracts. In particular

18.2.1 Documents or records relating to successful quotations/tenders - The contract and any relevant correspondence and records (e.g. any documents which might have a bearing on the way the contract was let or is interpreted) must be kept for at least 6 years after the contract comes to an end. If the contract is made as a deed/under seal the records must be kept for a minimum of 12 years.

18.2.2 Documents or records relating to unsuccessful quotations/tenders must be kept for at least 24 months from the date the contract starts.

19. Form and Conditions of Contract

19.1 The contract terms and conditions used must be the most appropriate for the procurement and can be the Council's pre-agreed standard terms and conditions, industry standard terms and conditions such as JCT, NEC etc. or bespoke terms and conditions written specifically for the particular procurement.

19.2 Contracts will clearly state:

- The Services/Works to be carried out or the goods to be supplied
- The price to be paid including any discounts
- The mechanism for managing any changes or variations to the contract during its life
- The mechanism by which price adjustments (e.g. for any agreed contract changes or contract variations, any additional payments for over performance, any payment deductions for under performance, any general efficiency (cost management) initiatives and the mechanism for any inflationary increases etc.) will be managed;
- The time by when (or during which) the contract is to be carried out;
- Appropriate performance management provision to allow for effective contract management
- Powers for the Council to cancel the contract and recover any resulting losses from the contractor
- Appropriate provision for information sharing to support the Council in meeting its statutory duties
- Appropriate contract termination provisions

20. Managing Contracts

20.1 A Contract Manager will be appointed to act on behalf of the Council for all type 3, 4 and 5 contracts.

20.2 For all type 5 contracts, a member of the Senior Management Team will be appointed to the contract governance structure.

20.3 Contract Managers must manage contracts in accordance with the Councils Contract Management Framework

21 Extending Contracts

21.1 Type 1 and 2 contracts can be extended by a Commissioner if the original contract included the provision to extend (an 'option period')

21.2 Type 3, 4 and 5 contracts can be extended by a member of the Senior Management Team if the original contract included the provision to extend (an 'option period'). Before activating any option period, an Extension Approval Request form must be completed and submitted to Procurement Services in order that an appropriate level of due diligence and a value for money assessment can be undertaken.

21.3 Officers wishing to extend a contract where the original contract did not include the provision to extend (an 'option period') must follow the Exemption process

21.4 When negotiating a contract extension Officers must make all reasonable efforts to secure improved contract terms for the Council

22 Changes to Contract

22.1 Changes (variations) to requirements and/or contracts are likely to occur throughout the life of a contract. Each individual contract should describe the specific process to be adopted to manage any change however all changes are subject to the following

- The value of any changes and/or any resulting changes to the performance management framework etc. required as a consequence of the change should be fully understood by the Council and documented prior to the change being agreed/implemented.
- Contract variations not provided for within the awarded contract should only be agreed in writing and must be approved by a member of the Senior Management Team following consultation with Procurement and if appropriate, Finance, Legal, HR etc.
- If a specific change, or cumulative changes significantly increase or decrease the scale or scope of the contract this may constitute 'Material Change'. Changes or variations to contracts that are considered material changes must not be agreed without the prior approval of the Head of Finance
- Any agreed change or modification will take effect on the date of signature
- The Council's 'Forward Contract Plan' and the master 'Contract Register' must be updated to reflect any changes/variations agreed

23 Reviewing Contractual Arrangements

23.1 Existing contracts must (as a minimum) be reviewed in accordance with the following requirements:

Total Contract Value	Review Date
£1 - £9,999	At least 3 months before a break clause, the end of the initial contract term and the final contract end date.
£10,000- £49,999	At least 6 months before a break clause, the end of the initial contract term and the final contract end date.
£50,000 - EU threshold for Goods & Services	At least 9 months before a break clause, the end of the initial contract term and the final contract end date.
EU threshold for Goods & Services and above	At least 12 months before a break clause, the end of the initial contract term and the final contract end date.

24 Concession Contracts

24.1 Concessions are a specific type of contractual arrangement under which the Council will grant the supplier the right to exploit an opportunity and receive some or all of its income from third parties. The operating risk which comes from exploiting the opportunity must pass to the supplier.

24.2 Where Services are considering establishing a Concession contract, they should seek advice from the Procurement Service before commencing the procurement process

24.3 Where the Council seeks to grant a Concession, the Officer should follow this Code as though it were a procurement, having regard to the various thresholds, need to advertise and other matters to ensure an open, transparent and competitive process

24.4 Where the Council seeks to grant a Concession contract, the Officer should consider the potential to secure future income streams or other non-cost benefits to the Council

24.5 Where the value of a Concession contract to be awarded is above the threshold set in the Concession Contracts Regulations 2016, Officers must follow the process identified in those Regulations.

25 Appointment of Consultants

25.1 Consultants are subject to the same competition requirements as any other type of contract and must be selected and commissions awarded in accordance with this Code.

25.2 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided, the deliverables expected, the total cost to be paid and any stage payment arrangements. The engagement shall also be subject to completion of a contract of appointment.

25.3 Records of consultancy contracts shall be maintained in accordance with this Code

25.4 Consultants shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the Council's Insurance Manager for the periods specified in the respective agreement.

26 The Council as a Supplier of Works, Goods or Services to External Organisations

26.1 The Head of Finance must be consulted where contracts to work for organisations other than the Council are proposed in order to: -.

a) Confirm the Council can legally enter into the contract;
b) Confirm the legality of the charging arrangements; and
c) Approve the terms and conditions of the proposed contract.

26.2 Officers shall produce a robust business case for the Council acting as a supplier which fully takes into account the costs to the Council of delivering the goods, works or services concerned. The financial viability of such business cases must be approved by the Head of Finance.

26.3 Officers shall liaise with the Council's Insurance Manager to ensure any potential liabilities are sufficiently covered by the Council's insurance policies.

26.4 Prior to signing any agreement to supply services to another organisation, Officers must get the necessary approval. For contracts with a value less

than £10,000 approval can be obtained from the relevant member of the Senior Management Team. For contracts with a value of £10,000 and above approval must be obtained from the Executive

27 Disposal of Assets

27.1 The following requirements apply to all disposals

- Any asset considered to be available for disposal should be offered for re-use within the Council prior to being disposed of externally.
- Assets should not be sold without competition unless agreed by the Head of Finance
- For assets expected to be worth £50,000 and above, Executive approval should be sought prior to commencing the disposal process
- Officers should use best endeavours to secure at least two written quotations
- Quotations can be obtained in the form of formal bids (the Council's E-Tendering portal can be used for this purpose) or by public auction (e.g. EBay, property/land auction etc.).
- In the event that an online auction (e.g. EBay) is used then the auction must be conducted using a Council account and under **NO** circumstances should personal accounts be used
- If a low value asset cannot be sold then consideration should be given as to its suitability to support local charities, voluntary groups, parish councils etc.
- In considering the proposal to dispose of land or property it is necessary to follow the Code of Financial Practice. Disposal of land and buildings are not normally covered by the Public Contracts Regulations or this Code. However, if the disposal is linked to further outputs or developments then there may be a requirement to comply with the Public Contracts Regulations. In these circumstances, Officers must seek advice from Procurement Services.

DEFINITIONS

Agent	A person or organisation acting on behalf of the Council.
Award Criteria	The criteria by which the successful Quotation or Tender is to be selected
Bidder	Any person or organisation submitting a Quotation or Tender
CCS	The Crown Commercial Service
Code of Conduct	The 'Officers Code of Conduct'
Commissioner	Those officers within the Council responsible for identifying a business need and through the process of procurement securing that need on behalf of the Council
Concession	A specific type of contractual arrangement under which the Council will grant the supplier the right to exploit an opportunity and receive some or all of its income from third parties. The operating risk which comes from exploiting the opportunity must pass to the supplier
Consultant	Someone engaged for a specific length of time to work to a defined project brief with clear outcomes to be delivered, and who brings specialist skills or knowledge to the role
Contract Manager	Those officers carrying out post award monitoring and management of a contract in accordance with the Council's contract management framework.
Contracts Finder	A Government portal for the advertisement of central and local government contract opportunities and contract awards (https://www.contractsfinder.service.gov.uk/Search)
Contract Register	The Council's internal record of all contracts awarded with a value of £5,000 or above
Councils E-Tendering Portal	CSW-JETS (https://in-tendorganiser.co.uk/csw-jets/aspx/ITLogin.aspx)
ESPO	The Eastern Shires' Purchasing Organisation
Existing Council Contract	A contract entered into directly by the Council that can be utilised by all Services for the supply of the goods, works or services specified within its terms.
Existing Framework Agreement	An existing contract let by another public body or purchasing organisation such as CCS, ESPO, YPO that may be legally utilised by the Council
EU Procedure	The procedure required by the EU or UK replacement where the Total Value exceeds the EU Threshold or any UK replacement threshold
EU Threshold	The contract value at which the EU public procurement directives or UK replacement procedure must be applied
Forward Contract Plan	The Council's internal record of all existing or potential contracts with a value of £25,000 or above
Framework Agreement	An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the main terms governing call off contracts to be awarded during a given period.
Freedom of Information	The Freedom of Information Act 2000 is an Act of Parliament that creates a public "right of access" to information held by public authorities.
Head of Finance	The Head of Finance or his/her specified nominee
Invitation to Tender	A document issued to bidders inviting competitive bids for works goods or services
JCT	Joint Contracts Tribunal standard building contract designed for large or complex construction projects

Material Change	Substantial changes or variations (individual or cumulative) that result in the agreement being "materially" different in character from the original agreement
MEAT	(Most Economically Advantageous Tender) A method of assessment that allows the contracting party to award the contract based on aspects of the tender submission other than just price.
NEC	The New Engineering Contract (NEC), or NEC Engineering and Construction Contract, is a formalised system created by the Institution of Civil Engineers that guides the drafting of documents on civil engineering and construction projects for the purpose of obtaining tenders, awarding and administering contracts.
OJEU	The Official Journal of the European Union
Officer	A person employed by or acting on behalf of the Council
PID	The Council's internal Procurement Initiation Document
Procurement Service	The centralised procurement service for Warwick District Council
Purchasing Consortium	Two or more independent organisations that join together, either formally or informally for the purpose of combining their individual requirements for purchased goods, services and works
Quotation	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).
Scheme of Delegation	The Council's internal arrangements delegating responsibility and accountability to take decisions and commit expenditure
Selection Criteria	The criteria by which Bidders are chosen to have their Award criteria evaluated or to submit quotations or tenders
SMT	The Council's senior management team
Standstill Period	A legal requirement imposed through the Public Contract Regulations which provides for a short (at least 10 calendar days) pause between the point when the contract award decision is notified to Bidders and the final contract conclusion during which time the decision can be challenged.
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006 [SI2006 No.246] Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the Council are transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a 'contracting-out' or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the
YPO	The Yorkshire Purchasing Organisation