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Warwick District Council Code of Procurement Practice

Code of Procurement Practice has been written in five sections.

1. Corporate rules
2. Procurement procedure
3. Contract Management Policy, Practice and Procedure
4. Glossary
5. Policies

SECTION FOUR

GLOSSARY

Added Value - Often used to classify non-cash releasing benefits realised through the procurement process. The "added value" from the procurement process may include risk reduction, stakeholder training, exclusivity, preferential access to resources etc., all of which would be classified as 'added value' benefits.

Aggregation – Rules that determine whether a series of below EU threshold contracts (or a contract which under its terms is renewable) should be let as a single, above EU threshold, contract.

Audit – The process of seeking effective assurance through verification as to whether business processes and controls are robust in that they protect value for money, probity, integrity and compliance.

Award Criteria – Evaluation Criteria and sub criterion used to inform, and evidence, the decision-making on which candidate supplier(s) to be awarded contract(s).

Benchmarking – The practice of making comparisons between organisations with the aim of ensuring continuing value for money, getting better performance and improving business practices.

Best value – Best value was a local government performance framework introduced into England and Wales by the Local Government Act 1999. The aim of the framework was to promote continuous improvement in local authorities' performance.

Bid Rigging - This occurs when suppliers communicate with each other before lodging their bids and agree amongst themselves who will be the successful bidder and at what price. This practice is one type of collusive tendering and may be discouraged by introducing new bidders and, regularly benchmarking offers against industry standards. See Collusion.

Business Case – A document prepared in support of a decision to make an investment or award a contract, showing an analysis of the costs, benefits and risks associated with each option open to the authority.

Business Plan – A document agreed between both parties to a contract showing pre-determined milestones (or what needs to be achieved by when) that the contractor is contractually obliged to meet. Also called a contractual obligations timetable.

CCS - Crown Commercial Services. A buying organisation set up by Central Government to offer complaint goods and contracts for use by other Public Sector organisations.

Call-off – the mechanism through which individual contracts (call-offs) are awarded under Framework Agreements. When making a call-off, the authority does not go through the full procedural steps in the EU Directives again, provided the rules were followed appropriately in the setting up of the framework agreements themselves.

Capital Spending – expenditure on any new build properties, improvements to existing ones, land purchases or any additional expenditure on fixed assets.

Cartel - An illegal association of producers bringing to market the same or similar categories who cooperate with each other to influence the market. While they may appear to be competing with each other, their actions such as fixing prices, restricting output, dividing markets or rigging tender bids are based on self-interest. See Collusion.

Central Purchasing Body (CPB) – defined in the Public Contracts Regulations as a contracting authority which a) acquires goods or services intended for one or more contracting authorities; b) awards public contracts intended for one or more contracting authorities; or c) concludes framework agreements for work, works, goods or services intended for one or more contracting authorities.

Clarifications – these are (written) discussions with candidates or tenderers for the purpose of clarifying or supplementing the content of tenders or the requirements of the contracting authority - they must not involve discrimination (i.e. the clarification must be circulated to all relevant parties). Clarifications are not negotiations on fundamental aspects of contracts.

Collusion - Secret agreement between two or more individuals or organisations to limit competition by the use of such methods as deception, misleading behaviour or fraudulent activity, where the objective is to obtain an unfair advantage. Collusion may take the form of a market sharing agreement, price fixing or bid rigging. Legally, all acts affected by collusion are considered to be void. See Bid Rigging and Cartel

Commissioning – the cycle of assessing the needs of people in an area, designing and then securing appropriate services.

Common Procurement Vocabulary (CPV) – CPV is an EU-wide classification system for public procurement contracts. CPV helps all EU businesses and SMEs to easily identify public procurement contracts offered by any EU public authority, irrespective of the original language of the tender notice. It works by allowing businesses to insert the relevant CPV code corresponding to their products or services into the Tenders Electronic Daily (TED) database, where all calls for tender in the EU are published. The system is able to describe contract types in 20 EU languages.

Competitive Dialogue Procedure – One of the EU procurement processes where, following an OJEU Contract Notice and a selection process, the authority then enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender. May be used where the authority does not consider that the open or restricted procedures will allow the award of a contract. Normally for use on high value, complex procurements.

Concession – A service contract granted by an authority to a contractor for the provision of a service to the general public usually under the arm's length control of the authority, e.g. a catering kiosk at a hospital or leisure centre.

Contract – Any lawful agreement between two parties where goods, services or works are provided in exchange for a consideration.

Contract and Relationship management – A vital part of the procurement life cycle, definable as the management of the interfaces between client and contractor to ensure that the relationship and contract performance are optimised to deliver best value.

Contract Notice – a notice, published via OJEU, to inform the EU market of an opportunity to win a contract.

Contract Award Notice – a notice, published via OJEU, to inform the EU market of which contract was awarded to which supplier

Contractor – A supplier, seller, vendor, provider, service provider, partner, constructor or other terminology meaning a party contracted by an authority to provide goods or services in return for payment.

Contracts Finder – this is the system, where all new government contract opportunities can be found.

Cost Avoidance - Cost avoidance is a reduction in cost resulting in a spend that is lower than would otherwise have been if the cost avoidance exercise had not been undertaken.

Dynamic Purchasing System – The EU dynamic purchasing system is a completely electronic system established by a contracting authority to purchase commonly used goods, works or services. Typically this will be for lower value goods and will involve the contracting authority linking its purchasing IT system with the supplier's systems. Unlike a Framework it does not have a fixed period and suppliers can join it throughout.

e-auction - Electronic auctions (or reverse electronic auctions as they are sometimes called) are on-line auctions where selected bidders submit offers electronically against the purchaser's specification. Other quality aspects are assessed prior to the auction stage.

EBAY - Electronic reverse auction website

eProcurement – electronic systems for tendering and buying.

eSourcing – electronic-sourcing system used to automate the end-to-end procurement cycle including supplier, tender, and contract management. It's web-based and it's paperless sourcing.

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 Procurement Directives – set out the legal framework for public procurement. They apply when public authorities and utilities seek to acquire supplies, services, or works (e.g. civil engineering or building). They set out procedures which must be followed before awarding a contract when its value exceeds set thresholds.

Evaluation Criteria – High level Selection Criteria and Award Criteria found in the PQQ and/or the ITT. Maybe broken down into more detailed sub criterion.

Exit Strategy – A strategy by which a party will terminate a contract and end the relationship in certain circumstances with, if necessary, access or step-in rights that will allow the client to assume control of such assets, materials, personnel and information that are necessary to maintain service continuity.

Expression of Interest (EOI) - An expression of interest is a formal notice to potential suppliers that a prospective buyer is planning to acquire goods or services and inviting interested suppliers to register their interest.

Financial Regulations – (often referred to as Contract Standing Orders) Procurement activities must comply with the Councils' own Contract Procedure Rules contained in Financial Regulations. These regulate how a Council conducts business and employees must conform to them. The over-riding Warwick District Council Financial Regulations are termed the "Code of Financial Practice".

Framework Agreement – a general term for agreements with providers that set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement (usually 4 years). In most cases a framework agreement itself is not a contract, but the procurement to establish a framework agreement is subject to the EU procurement rules. No new suppliers can join.

Freedom of Information Act (FOIA) - This gives anyone the right to access recorded information held by public sector organisations. There are no restrictions on age, nationality or where you live. The request will be handled under different regulations depending on the kind of information you ask for. An organisation could refuse your request if the information is sensitive or the costs are too high.

Further Competition – (aka mini-competition) the mechanism through which individual contracts (call-offs) are competed under Framework Agreements.

Government Buying Standards (GBS) – These are easy wins. GBS are designed to make it easier for public sector buyers to buy sustainably and therefore cut costs and reduce carbon whilst looking after the environment. GBS specifications are tested by stakeholder review and a market capacity assessment, and whole life costing is assessed.

Ineffectiveness - A remedy which can be obtained by suppliers in procurements where a contracting authority has failed to place a mandatory OJEU notice; has breached requirements relating to standstill thereby denying a supplier the opportunity to challenge an award decision; or has failed to follow call-off requirements under a framework for a call-off over the EC procurement threshold.

Input Specification – A specification that sets out the precise method that the contractor needs to employ to deliver a product or service (sometimes known as a conformance specification). Places the onus and the risk firmly with the client to prescribe correctly, in some detail, such things as materials, staffing levels and processes. Consequently seen to stifle innovation Input specifications tend to be longer documents demanding a greater attention to detail.

Invitation To Quote (ITQ) – A call for bids or call for lower value quotes or invitation to quote (ITQ) (often called quote for short) is a special procedure for generating competing offers from different bidders looking to obtain an award of business activity in works, supply, or service contracts.

Invitation To Tender (ITT) – A call for bids or call for tenders or invitation to tender (ITT) (often called tender for short) is a special procedure for generating competing offers from different bidders looking to obtain an award of business activity in works, supply, or service contracts. They are sometimes preceded by a pre-qualification questionnaire (PQQ) where allowed.

Key Performance Indicator (KPI) – One of a small number of the most important measures of a contractor's performance.

Lessons Learned Log – A document used by both parties to a contract for recording lessons learned during the operational phase, as part of an effort to achieve and monitor continuous improvement.

Letter of Intent - A Letter of Intent is a document outlining the status of agreement between two or more parties before a contract has been finalised and which aims to give some comfort to one or both parties that they can anticipate a contractual agreement will be forthcoming.

Life-Cycle Costing (LCC) – used interchangeably with Whole-Life Costing (WLC).

Liquidated Damages - Present in certain legal contracts, this provision allows for the payment of a specified sum should one of the parties be in breach of contract.

Market Testing - Market testing is about developing an understanding of the market (i.e. of suppliers collectively) to a proposed requirement and procurement approach.

Most Economically Advantageous Tender (MEAT) – Factors other than or in addition to price, like quality, technical merit and running costs can be taken into account. This is the evaluation option other than lowest price.

Negotiated Procedure – One of the EU procurement processes, under which a purchaser may select one or more potential bidders with whom to negotiate the terms of the contract. An advertisement in the OJEU is usually required but, in certain circumstances, described in the Regulations, the contract does not have to be advertised in the OJEU. An example is when, for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular bidder.

OJEU – Official Journal of the European Union.

OJEU Notices – includes the "Contract Notice" (i.e. an EU wide advertisement) and the "Contract Award Notice" (which informs the EU market who the contract was awarded to).

Open Procedure – One of the EU procurement processes under which all those interested may respond to the advertisement in the OJEU by tendering for the contract.

Options Appraisal – described as "The process of defining objectives, examining options and weighing up the costs, benefits, risks and uncertainties of those options before a decision is made." (Source: HM Government: Green Book). It enables you to objectively and systematically evaluate the best way to achieve your desired outcomes / optimal solution. This is achieved by exploring the relative costs and benefits of a particular option and then compare this fairly to how other options perform against the same set of evaluation criteria which you will have developed.

Output Specification – A specification that determines only the desired end product or result (sometimes called a performance specification). The contractor is given the flexibility to decide for themselves exactly how those outcomes should be achieved, using their own specialist expertise and competence to determine how best to manufacture and supply the goods or provide the service. Consequently the contractor bears the greater share of risk in this regard. Tend to be shorter, more succinct documents, because they only set out what is required from a product or service, rather than prescribing in detail how the contractor should go about delivering it.

Outsourcing – The transfer of a service currently provided by a public sector body to a private, third sector or other public sector body (and sometimes a consortium) under a contract. Outsourcing usually involves the transfer of staff and assets. The aim may be to improve performance, save money, or both.

Parent company guarantee - A parent company guarantee binds the guarantor (the 'parent company') to fulfil and complete a subsidiary company's obligations and liabilities in the event of failure by that subsidiary to fulfil and complete its obligations and liabilities under a contract.

Payment Mechanism – A mechanism set out in the contract showing precisely how payments to the contractor will be calculated and timed, taking into account any milestone payments and any performance or availability data that may trigger payment deductions or bonuses.

Performance Bond - A performance bond is a written agreement set up by participants in a relationship in order to guarantee performance, or to provide security against default or non-performance. A sum of money is deposited as surety that each party will fulfil their obligations, as the bond may be forfeited in defined circumstances.

Performance Monitoring – The process of gathering data pertaining to a contractor's performance by an agreed set of measures set out in the contract.

Performance Reporting – The process of compiling and analysing data pertaining to a contractor's performance by an agreed set of measures set out in the contract and presenting it as management information.

Pre-Qualification Questionnaire (PQQ) – The PQQ is a tool used as the first part of a two-stage procurement process to enable public sector procurers to identify the most suitable suppliers to invite to tender (or quote) for contracts in the second part of a two-stage procurement process.

Prior Information Notice (PIN) – a mechanism that can be used to take advantage of reduced timescales in the main procurement phase. The rules also require a minimum period of 52 days between the publication of the PIN and Contract Notice before any timescale reductions may take place.

Procurement – the process of acquiring goods and services from third parties. Various policy drivers encourage local authorities to review procurement services and modernise procurement practices to achieve greater efficiencies.

PfH - Procurement for Housing. A buying organisation set up to provide E U compliant framework arrangements for the acquisition of goods and services for use by Housing Associations and Public Sector organisations

Procurement Report - The report that the Council is obliged to maintain in respect of each procurement of a contract valued at or above the relevant EU Threshold under regulation 84(1) of the PCR 2015.

Procurement Strategy - The procurement strategy describes the contribution that effective procurement will make to fulfil the Council's aims and objectives. The definition of procurement in this context is not only limited to purchasing – it can have a wider meaning and can address the ways in which the Council can deliver its services – from providing the service in-house to joint commissioning and outsourcing.

Professional Indemnity Insurance – Insurance cover purchased by the contractor at a level usually set by the client, to protect both parties from insurable risks arising from the application of the contractor's professional skill, knowledge and practice in the course of the performance of the contract.

Public Liability Insurance – Insurance cover purchased by the contractor at a level usually set by the client, to protect both parties from claims arising from the general public and third parties in the course of the performance of the contract.

Public-Private Partnership (PPP) – A more complex, long-term contract, joint venture or similar partnership between public and private sector bodies to deliver a public service. Includes contracts awarded under the Private Finance Initiative (PFI).

Purchase to Pay (P2P) – electronic-buying system used to automate the end-to-end P2P process. Much more than “online shopping”, it minimise requirements for “touching” data as it is driven through the transactional process. P2P includes requisitioning, ordering (approval), order transmission to supplier, goods receipting and invoicing.

Restricted Procedure – One of the EU procurement processes under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender for the contract and after going through a Pre-qualification process – (see PQQ). This allows purchasers to avoid having to deal with an overwhelmingly large number of tenders.

Retention – A proportion of payment (usually 5-10% of the total contract price) withheld by the client until satisfactory completion of a warranty period or initial period of operation. Usually associated with contracts for the purchase of capital equipment.

Risk – Uncertainty of outcome, whether this is positive (i.e. an opportunity) or negative (i.e. a threat).

Risk Management – Identifying and controlling the factors that may have an impact on the fulfilment of a contract.

Selection Criteria – Evaluation Criteria and sub criterion used to inform, and evidence, decision-making on reducing the quantity of candidate supplier(s) to pass through to next stage selection that will be based on Award Criteria.

SME – Small to Medium Sized Enterprise - Medium-sized enterprises <250 employees, turnover <€50m; small enterprises <50 employees, turnover €10m, micro enterprises <10 employees, turnover €2m.

Social Enterprise - A business driven by social objectives, where profits are principally reinvested in the business or in the community, rather than by the need to maximise profit for shareholders and owners. Social enterprises non-profit taking organisations.

Specification – A document contained within a contract setting out clearly the client’s specific requirements for the goods, services or works in question. See also Input Specification (performance) and Output Specification (technical).

Spend Analysis - Spend analysis is the part of the procurement process focused on reviewing expenditure data to allow exploration of the opportunities which may exist to create value in a category. The key activities include acquiring the data, cleansing the data, and analysing the data.

Spot Price – or spot rate of a commodity (e.g. diesel) is the price that is quoted for immediate (spot) settlement (payment and delivery). This is in contrast with a forward price established in a contract, where terms (price) is set now, but delivery and payment will occur at a future date. Forward price will balance forward premium and forward discount based on the suppliers assessment of price risk and the market.

Stakeholder – Any individual or group of people, either internal or external to the authority, who can be identifying as having either an interest in, or an influence over a contract or relationship. The client, contractor, service users, Members and standards authorities are all stakeholders.

Standstill Period – (sometimes known as the Alcatel Period) a 10 calendar day period (15 days where not electronic) prior to the award stage to permit unsuccessful tenderers to seek

further information about the award decision, and enable them to take action in the courts where they have sufficient grounds.

Sub criterion – Low level Selection Criteria and Award Criteria. May be rolled up to less detailed Evaluation Criteria.

Sustainable Procurement – a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment.

Third Sector – Another expression for third sector is the voluntary and community sector (VCS). The Third Sector is a diverse and active sector. Organisations share common characteristics: they are non-governmental and value-driven. They also principally reinvest any financial surpluses to further social, environmental or cultural objectives. The term encompasses voluntary and community organisations, charities, social enterprises, cooperatives and mutuals, both large and small.

Thresholds – Monetary values (of contracts) above which different procurement processes must be followed. EU procurement processes are applied to contracts above EU thresholds. EU thresholds are net of VAT.

Transparency code - The local government transparency code is issued to meet the government's desire to place more power into citizens' hands to increase democratic accountability. It will make it easier for local people to contribute to the local decision making process and help shape public services.

The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) - The purpose of TUPE is to preserve continuity of employment and to safeguard employment rights of all employees whose employment transfers to a new employer as a result of a relevant transfer.

Value For Money – the optimum combination of whole-life cost and quality to meet the user's requirement.

Variation – A change to the contract agreed by both parties and implemented under the change control process as set out in the contract.

Variant bids - A bid which is different from that specifically requested by the contracting authority in the tender documents. Examples of variant bids are those proposing different pricing structures, or new and innovative ways of delivering a service.

V.E.A.T notice - The abbreviation stands for Voluntary Ex-Ante Transparency notice and it is covered by the Remedies Directive. It is a means of advertising the intention to let a contract without opening it up to formal competition. If a contracting authority decides to take this route, they must give sufficient information as to the justification for direct award and they must still observe the minimum standstill period. By doing this it provides economic operators the opportunity to challenge the decision.

WDC - Warwick District Council

WEEE – Waste Electrical and Electronic Equipment directive January 2007 - Aims to both reduce the amount of electrical and electronic equipment being produced and to encourage everyone to reuse, recycle and recover it.

Whole-life Cost (WLC) – The total cost of investing in an asset, evaluated by taking into account not only the initial outlay but also all the costs of owning, operating and disposing of that asset i.e. means comparing not just the initial purchase price of a product, but all future costs as well.

YPO - Yorkshire Procurement 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