

Title: Preparing for the introduction of the Procurement Act 2023

Lead Officer: Rebecca Reading; Andrew Rollins

Portfolio Holder: Jonathan Chilvers

Wards of the District directly affected:

Approvals required	Date	Name
Portfolio Holder	21/01/2025	Jonathan Chilvers
Finance	17/01/2025	Andrew Rollins
Legal Services	17/01/2025	Kathryn Tebbey
Programme Director for Climate Change	22/01/2025	Dave Barber
Chief Executive	22/01/2025	Chris Elliot
Head of Service(s)	17/01/2025	Andrew Rollins
Section 151 Officer	22/01/2025	Andrew Rollins
Monitoring Officer	22/01/2025	Graham Leach
Leadership Co-ordination Group	22/01/2025	-
Final decision by this Committee or rec to another Cttee / Council?	Yes	
Contrary to Policy / Budget framework?	No	
Does this report contain exempt info/Confidential? If so, which paragraph(s)?	No	
Does this report relate to a key decision (referred to in the Cabinet Forward Plan)?	Yes, Ref 1,481	
Accessibility Checked?	Yes	

Summary

This report briefs Members on the Procurement Act 2023 which is due to come into force on 24 February 2025. A consequential review of the Code of Procurement Practice has been undertaken and a new set of standing orders is recommended for approval.

Recommendations

- (1) That the Cabinet recommends to Council they adopt the updated Code of Procurement Practice and Corporate Procurement Strategy with immediate effect, unless stated, and the constitution is amended accordingly. With the key emphasises being:
 - To increase the threshold for Cabinet approval of exemptions to the UK threshold for Goods and Services.
 - To moving the £10,000 thresholds to £50,000 with the ability to direct award contracts providing best value is evidenced, with this to commence no later than 1st September 2025.
 - To enforce the completion of a timely Procurement Project initiation Document (PPID) for all procurement projects of £25,000 and above, to ensure Procurement Act 2023 governance if fulfilled.
 - That the Monitoring Officer be given delegated authority to approve the Procurement Conflicts of Interest assessment specified within the Procurement Act, in consultation with the relevant Head of Service.
 - That the Monitoring Officer be given delegated authority, in consultation with the Chief Executive, Section 151 Officer, Internal Audit and Risk Manager, Chair of Audit and Standards, Portfolio Holder for Resources and the relevant Head of Service, to exclude suppliers from a procurement project due to identification of an unfair advantage as defined in the Procurement Act Guidelines.
 - (2) The Monitoring Officer, in consultation with the Head of Finance, Portfolio Holder for Resources and Chair of Audit & Standards Committee, be given delegated authority to make changes to the new Code of procurement Practice to reflect any additional or revised guidance published prior to the Procurement Act go live date.
 - (3) That the value of a Key Decision, as defined in the constitution be revised to the value of the Goods & Services Threshold within the act (currently c.£177k excluding VAT) to provide consistency around key decisions on procurement that require Cabinet approval.
 - (4) The Monitoring Officer be delegated authority to revise the Key Decision value recorded in the constitution to align with the UK threshold for Goods & Services) as and when it is revised by Government.
 - (5) That the requirement for the sealing of contracts, as defined in the constitution, be revised to all Works contracts, and Goods contracts with a Whole Life Cycle of 6 years or more.
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1. Reasons for the Recommendations

1.1.1 Background/Information

1.1.1 Following the exit of the UK from the EU in 2020, the government committed to reforming Public Procurement, initiated by the publication of the procurement reform green paper in December 2020. This led to the creation of the Procurement Act 2023 which was given Royal Assent in October 2023 and the consequential Procurement Regulations 2024. Both the Procurement Act 2023 and Procurement Regulations 2024 will come into force on 24 February 2025; and will supersede the Public Contracts Regulations 2015, Concession Contract Regulations 2016 and other related regulations. The Council is required by law to adopt internal requirements for procurement which is captured by the Council's Code of Procurement Practice. These are to be found in the [Council's constitution – rules of procedure](#). With the new legislation approaching, there is need to review the Code of Procurement Practice to align them with the new legislation. On review by the Strategic Procurement & Creditors Manager, it was concluded that the Code of Procurement Practice needed a substantial review and update to support the major changes being brought by the new legislation and the principles and requirements set out within it.

1.2 Procurement Act 2023 and Procurement Regulations 2024

1.2.1 The Procurement Act 2023 and Procurement Regulations 2024 aim to deliver the following improvements to public procurement over and above the current Regulations:

- Consideration of Procurement throughout the entire commercial cycle, from 'cradle to grave'
- Transparency and integrity
- Fair and Equal treatment for suppliers
- Performance monitoring and improved contract management
- Opening up opportunities to small businesses and social enterprise
- The ability to exclude and bar suppliers in certain circumstances, including poor performance
- Delivery of strategic national priorities by having regard to the National Procurement Policy Statement

1.2.2 To achieve these, the following wholesale changes have been made:

- The term Procurement has been redefined to recognise all stages of the Commercial Cycle: Planning, Supplier engagement, Commissioning, Sourcing, Awarding, Contract Management, Contract Termination.
- Increased scrutiny on Contract Management to ensure best practice, value for money, and Social Value benefits.
- Increased transparency obligations throughout a Procurement Project by introduction of a new Central Digital Platform for suppliers and buyers to register and store their details and activity so that Procurement activities can be scrutinised. This will be supported by mandated notices which have been expanded to include Procurement Pipelines, Pre-market engagement, Contract modifications, Contract Performance, and Procurement and Contract Terminations.
- More robust guidance on Conflicts of Interest and a requirement to record and report on these throughout a Procurement.

- The introduction of the Procurement Review Unit (PRU) to monitor compliance, investigate supplier complaints and persistent poor practice, maintain the central supplier debarment list.
 - Increased opportunities for exclusion, whereby in specified circumstances, the Council must or may exclude bids received from suppliers due to their serious misconduct, unacceptable poor past performance, or other circumstances which determine whether it is appropriate to award a public contract to a particular supplier. Serious cases of misconduct will be monitored by the PRU for inclusion on the central debarment list which the Council must consult once quotes or tenders are received and then during the lifetime of the contract.
- 1.2.3 The focus of the legislation remains on competition and 'Value For Money' but has change the emphasis from considering only financial value to a need to also consider non-financial benefits and Social Value when evaluating suppliers bids.
- 1.2.4 For clarity, as with the existing legislation, many of the legislative provisions apply only to procurement projects above certain thresholds. The most common thresholds are currently set at - £213,477 (incl. VAT) for goods and services and £5,336,937 (incl. VAT) for works. Whilst the majority of the Council's contracts will be below these thresholds, some of the provisions and objectives, particularly around engagement of SMEs and transparency, which will apply to 'below threshold' procurement.
- 1.3 Transition and Preparation
- 1.3.1 The legislation is not retroactive, except for transparency requirements on supplier payments. All procurements formerly commenced (published) prior to the Procurement Act 2023 and Procurement Regulations 2024 coming into force on 24 February 2025 will be governed by the relevant prior regulations. The Procurement Act 2023 and Procurement Regulations 2024 will only apply to procurements projects (and the resulting contracts) published post 24 February 2025. The Code of Procurement Practice has been updated to recognise the impact of this.
- 1.3.2 In preparation for the Procurement Act 2023 and Procurement Regulations 2024, the Council has undertaken the following:
- Created a Procurement Reform Action plan which identifies actions needed to meet the new legislation (see appendix 1).
 - Introduced a SLT Procurement subgroup to contribute to the successful implementation of the actions stated within the Procurement Reform Action Plan.
 - Resurrected the Procurement Champions members group to provide oversight and support for the Procurement Reform Action Plan and Council procurement activity.
 - Review training requirements for Officers and Members and disseminate training provided by the Cabinet Office in preparation for the legislative changes.
- 1.3.3 The most urgent item on the Procurement Reform Action plan is the review and revision of the Council's Code of Procurement Practice and the review of the Procurement Strategy. Future reviews that will be reported to Cabinet in due course are the introduction of a Corporate Social Responsibility Statement and

a Sustainable Sourcing Policy and review of the following existing policies:

- Social Value Policy
- Equality in Procurement Policy

1.4 Code of Procurement Practice

1.4.1 The Local Government Act 1972 requires councils to adopt contract standing orders which the Council has named the Code of Procurement Practice. These are set by councils according to their own requirements and cover, for example – authority to procure, procedure according to value, required documentation and other relevant matters. The current Code of Procurement Practice can be found in the [Council's constitution – rules of procedure](#).

1.4.2 The current Code of Procurement Practice was last fully reviewed and updated in 2018 to make it clearer and more accessible in any event. It was then updated with minor changes in 2021 to accommodate actions to help meet the Council's Climate Change Action Plan. Despite the robust nature of the current Code of Procurement Practice, the wholesale changes identified in 1.2.2 have required a major revision of the Code of Procurement Practice to ensure it provides sufficient support for Officers and Members in meeting the new legislative obligations. Accordingly, the new Code of Procurement Practice has been prepared and is attached in Appendix 2.

1.4.3 Key changes within the new Code of Procurement Practice are:

- The new Code of Procurement Practice has been revised to recognise the re-definition of Procurement as referencing the whole commercial lifecycle approach as well as the additional obligations that accompany this. The intention is the document is supporting Officers and members in understanding their obligations under the new legislation; as well as defining accountabilities for each stage of the Procurement (Commercial) cycle due to the devolved structure of procurement within the Council. Although accountability for all procurement activities outside of sourcing a contract lie within Service area, it is still recognised that further input and guidance may be required from the central Procurement function and/or legal services.
- Changes to the internal thresholds with regard to undertaking competitive processes will come into force by no later than the 1st September 2025, to enable training to be implemented for Officers on achieving Best Value and fulfilling governance obligations linked to the Procurement Act 2023 including the requirement to record decision making as soon as practicable.
- Changes to the internal thresholds exemptions to streamline operational procurement for service areas.
- Review of transparency obligations and notice publication requirements.
- The introduction of a more robust Conflict of Interest requirement with increased reporting and monitoring procedures.
- The redefinition of Supplier engagement and a more robust requirement for the undertaking, recording and publication of such activity.

1.4.4 At the time of writing this report, the impact of the above will affect the following, and may result in further reviews and reports on resources, capabilities and priorities:

- The Council currently has 291 contracts listed within its published contract Register, with a total annual commitment of £75,600,366. Of

these contracts, 266 are for ongoing BAU requirements with a total annual commitment of £61,752,265. When replaced, the increased transparency requirements will result in a minimum of 3 times the number of legal notices currently placed for these contracts.

- Of the BAU contracts, 61 are above the UK thresholds for the Public Contract Regulations 2015 and will fall under the additional obligations of the Procurement Act and Procurement Regulations 2024 when they come to be replaced. Most of them fall within Neighbourhood and Assets, and Finance.
- There are currently 49 planned procurement projects that will fall under the new legislation and its additional obligations.
- Of current contracts, 48 have been awarded through an exemption to the Code of procurement Practice, 10 of which would have fallen under the requirement to obtain Cabinet approval. With the exemption changes within the new Code of Procurement Practice, including the threshold change for cabinet approval, none of these exemptions would require cabinet approval.

1.5 Procurement Strategy

1.5.1 The current Procurement Strategy covers 2019 to 2023. It was updated in 2021 to incorporate aspirations within the climate change action plan.

1.5.2 The Procurement Strategy sets out key objectives for the Council regarding procurement, to facilitate the achievement of the Council's objectives.

1.5.3 In 2023, the Council's corporate strategy was updated, setting out new objectives for the organisation which included several actions that could be facilitated through Procurement:

- 1.5.3.1 (1.2.1) Our medium-term financial strategy will set out the steps we will take to ensure we continue to be financially sustainable and can continue to invest across the district. This will include making better use of existing resources and consider how we can increase income generating opportunities.
- (1.2.2) Our change programme will improve the efficiency and effectiveness of how the Council delivers services to ensure they remain responsive and accessible to customer needs.
- (1.3.1) By reviewing how Council services are delivered and measuring performance will help ensure high quality services are being delivered across the Council.
- (1.3.4) We will further develop our approach to commissioning and contract management across the Council to continue to ensure residents receive the best service possible and value for the taxpayer.
- (1.4.1) Our People Strategy will help to attract the right people with the right skills the Council needs; this will help the Council become recognised locally, regionally and nationally as an employer of choice.
- (1.5.2) We will continue to develop our approach for maximising social value through our place-shaping initiatives to recycle money within the District.
- (2.1.1) Significantly improve the energy efficiency of Council buildings and introduce renewable energy generation capacity where possible.
- (2.5.1) By working in partnership locally, regionally and nationally, we will

identify, evaluate and undertake initiatives to help local people reduce their energy needs.

1.5.4 In addition, the Procurement Act 2023 has defined new Procurement objectives for the public sector, as well as legislating the National Procurement Policy Statement which will set out additional objectives from parliament.

1.5.5 To recognise these changes, the Procurement Strategy has been reviewed and updated to ensure that it sets out how the Council will fulfil its local, national and legal objectives through Procurement. The Procurement Strategy 2024 to 2028 is set out in Appendix 3.

1.5.6 Key changes within the new Procurement Strategy are:

- A recognition of the new Procurement structure within the Council and the termination of the shared service arrangement with Warwickshire County Council Procurement.
- The setting out of WDC Procurement objectives to support the achievement of local, national and legal ambitions.
- The recognition of the National Procurement Policy Statement for consideration in addition to the Procurement Strategy objectives.
- An increased emphasis on the adoption and use of procurement best practice across the Council, in particular with regard to contract management and performance monitoring.
- An update in all actions for achieving defined priorities.

1.6 Section on Key definition

The proposal to revise the key decision threshold is brought forward for consideration to provide alignment of policy and key decisions to make it a more streamlined process. This increase is considered reasonable alignment based on the measures that are required for contracts above this value.

1.7 Section on sealing contracts

The proposal to revise the requirements for a contract to be sealed is to balance the benefits of sealing a contract against the additional time and cost of sealing a contract.

1.7.1 A standard contract 'signed under hand' is legally enforceable up to 6 years upon the resolution of the contract. A sealed contract however can be enforced the contract for up to 12 years.

1.7.2 Service contracts and most goods contracts by their nature have a finite impact aligned to the term of the contract. Any requirements to enforce a contract beyond its resolution would be sufficiently covered within the standard 6 years provided by a contract signed underhand. However, Works contracts and some product contracts for long-life plant equipment whereby contract considerations may apply up to 10 years or more beyond the original contract term.

1.7.3 Currently, the constitution requires all contracts above the UK threshold for Goods and Services must be sealed. Although contracts are now sealed electronically, it requires additional time, legal resource and electronic sealing costs to seal a contract. As there is no benefit from sealing Service contracts and most product contracts, retaining this requirement for sealing is not cost effective.

1.7.4 It is therefore proposed that the constitution is amended to align the requirements for the sealing of a contract to just apply to contracts for which

the sealing process would create legal benefit, such as for Works contracts and Product contracts whereby the lifecycle of the product exceeds 6 years.

2. Alternative Options

2.1 Alternative options have been considered, but there are none due to the Procurement regulations being mandatory.

3. Legal Implications

a. The Procurement Act 2023 received Royal Assent in October 2023, and official notice was given for the 6 month count down to the Procurement Regulations 2024 coming into force on 28th October 2024. In September 2024 the Cabinet announced a delay to the launch to the 24 February 2025. Non-compliance with the new regulations is considered a breach in law, which are subject to challenge, either by the PRU, or through the formal challenge process.

4. Financial

- a. WDC currently has a budgeted contract commitment of circ. £75.6m per annum and has spent circ. £65.5m in the 2023/24 financial year on goods, works and services.
- b. With the current financial pressures placed on the council which include the need to save £2.5m recurring by 2028, it is essential that procured spend not only is compliant but is also achieving 'Value for Money' and obtaining added value through obtaining Social Value, innovation and development from the Council's contracts.
- c. The need for Councils to demonstrate compliance while delivery value for money and maximising public benefit will come under greater scrutiny under the Procurement Act 2023 and Regulations 2024; which increases the transparency requirements placed on public sector procurement to cover the whole commercial lifecycle (cradle to grave), with a particular emphasis on best value contract management.
- d. WDC has already set up good foundations for good practice throughout the Council's Sourcing activities which are overseen and managed by the inhouse Procurement function; however, due to the devolved structure for Procurement regarding commissioning and contract management, the change in regulations will expose the Council to greater risk of legal, financial and reputational damage.

5 Corporate Strategy

5.1 Warwick District Council has adopted a Corporate Strategy which sets three strategic aims for the organisation. This report contributes to the delivery of each of the aims by:

5.2 **Delivering valued, sustainable services** – Good procurement practices throughout the procurement cycle will ensure the Council obtains value for money in the provision of its services and allows for flexibility and innovation to ensure that its contracts are sustainable.

5.3 **Low cost, low carbon energy across the district** – The Procurement Strategy and Code of Practice include actions and commitments to ensure that the Council's objective is to become a net-zero carbon organisation by 2025, including contract services by 2030. This includes the award criteria for Corporate Social Responsibility (CSR) being included in the award of all Procurement projects above £50,000. CSR includes environmental benefits and

carbon reduction commitments; and the inclusion of suppliers to declare their carbon footprint information and provide a carbon reduction plan.

- 5.4 **Creating vibrant, safe and healthy communities of the future** – The Policies have been revised to reflect agreed delegations. There is no direct impact on this strategic aim.

5. Environmental/Climate Change Implications

- a. The Procurement Regulations 2024 has stated that the National Procurement Policy Statement (NPPS) will now become a legal obligation. The NPPS includes several government objectives regarding decarbonisation and climate change.

6. Analysis of the effects on Equality

- a. The Procurement Regulations 2024 includes a more robust set of requirements regarding conflicts of interest, expanding the definition of conflicts to include associative and inferred. An assessment of conflicts of interest including a plan of how these will be managed will become a mandated report to ensure equality through the procurement cycle.
- b. The regulations have also changed the parameters for supplier feedback and management to enforce a more transparent approach that allows for greater public scrutiny to ensure equality within the Procurement cycle.

7. Data Protection

- a. WDC has almost 300 contracts with the private sector, many of which involved the appointment of a data processor. Compliance with the Procurement Initiation Document ensures that data protection risks are contractually accounted for.

8. Health and Wellbeing

- 9.1 Not directly impacted.

9. Risk Assessment

- a. Competitive procurement is and will remain the cornerstone of the Council’s procurement approach as this is considered to be the fairest way of awarding contracts and will deliver value for money for the Council and its community in the most transparent way.
- b. There may be circumstances where a direct award of a contract with a supplier will be appropriate; however, no direct contracts will be placed where it will put the Council in contravention of the requirements of the Procurement Regulations 2024.

Risk Identified	Risk Management and Mitigation
Procurement activity does not comply with the legal framework	<p>All sourcing activity above £25,000 is required to complete a Procurement Project Initiation Document.</p> <p>All commissioning and contract management TBC as part of the process in response to 4.4 of the Action Plan.</p>

Results of procurement activity do not offer value for money	Continue to consider cost, quality, and CSR in all procurement activity with support from the Procurement Function.
Results of procurement activity not achieving carbon reduction commitments within Climate Change Action Plan	Code of Procurement Practice amended to provide governance on the inclusion of Corporate Social Responsibility commitments (which includes environment, sustainability and carbon reduction) within all contracts over £50,000. National Procurement Policy Statement which includes government objectives regarding decarbonisation and climate change are now legally required under the Procurement Regulations 2024.
Procurement activity results in no contract being awarded and therefore creates wasted resource and consultancy spend from undertaking the procurement activity.	Wide circulation of guidance on the benefits of premarket engagement and understanding your supply market; and Procurement function support and advice in undertaking premarket engagement activity.
Contract failure resulting from poor company performance and/or company financial instability/failure.	Wide circulation of guidance on good contract management practices and provision of a financial monitoring data to contract owners by the Procurement team through use of a subscription service to CreditSafe.
Failure to follow the agreed Council Procurement Practices and Procedures and, as a consequence, not obtaining best value procurement.	TBC as part of the process in response to 4.2 of the Action Plan.
Failure to follow Procurement Regulations 2024 by not listing All regulatory notices in Contracts Finder (all procurements above £25,000) and Find a Tender (FTS).	TBC as part of the process in response to 3.1 of the Action Plan.
Officers are complicit in Procurement fraud during commissioning, sourcing or contract management of a contract.	Conflict of Interest Assessment form being introduced in support of the revised Code of Procurement Practice. Equality in procurement policy, Conflict of Interest guidance and form to be reviewed and amended as part of the process in response to 7.1 of the Action Plan.

Background papers

None

Supporting documents

Appendix 1 – Procurement Reform Action Plan

Appendix 2 – Code of Procurement Practice 2025

Appendix 3 – Corporate Procurement Strategy 2025 to 2028