

 Executive – 1st October 2014		Agenda Item No. 13
Title	Proposed exemption from the Code of Procurement Practice	
For further information about this report please contact	Sean McCabrey 01926 456440 sean.mccabrey@warwickdc.gov.uk	
Wards of the District directly affected	All	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number		
Background Papers	Executive 12th Feb 2014 – Proposed Exemption from the Code of Procurement Practice – Urgent Item	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No
Equality & Sustainability Impact Assessment Undertaken	No
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Officer/Councillor Approval		
Officer Approval	Date	Name
Deputy Chief Executive		Bill Hunt
Head of Service		n/a
CMT		Chris Elliott, Andrew Jones, Bill Hunt
Section 151 Officer		Mike Snow
Monitoring Officer		Andy Jones
Finance		Sue Simmonds
Portfolio Holder(s)		Cllr. Vincett
Consultation & Community Engagement		
n/a		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

1. SUMMARY

- 1.1 This report seeks an exemption from the Code of Procurement Practice in order to extend the arrangements for Asbestos management services provided by PTL Occupational Hygiene Consultants, for asbestos management, until 1st June 2015 during which time the on-going asbestos procurement exercise will be completed and new contracts awarded and mobilised.

2. RECOMMENDATIONS

- 2.1 That Executive approves an exemption to the Code of Procurement Practice to extend the arrangements with PTL Occupational Hygiene Consultants (PTL) for the provision of Asbestos management services to 1st June 2015.
- 2.2 That Executive notes that an OJEU compliant procurement exercise has been commenced to appoint Asbestos management and removal contractors which should enable the interim arrangements to cease on the 1st June 2015, to coincide with the commencement of the aforementioned contracts on 1st April 2015.

3. REASONS FOR THE RECOMMENDATION

- 3.1 The Council has a statutory duty to manage asbestos in the buildings it owns under the Control of Asbestos Regulations 2012 (CAR) and the Health and Safety at Work (etc) Act 1974 amongst other legislation. In order to discharge its duties in respect of the HRA stock and other corporate buildings, the council needs to maintain an Asbestos register and undertake Asbestos surveys and re-inspections, both periodically and as repair and maintenance works dictate.
- 3.2 An exemption from the code of Contract Practice was approved by executive on 12th February 2014. The Initial delays resulting from management changes within Housing and Property Services have been compounded by difficulties in recruiting an asbestos officer.

An Asbestos officer has now been appointed and a revised procurement timetable is being drawn up in consultation with the Procurement team. Officers consider it to be in the council's best interests to maintain the existing temporary arrangements with PTL in order to ensure it effectively executes its statutory duties.

- 3.3 PTL were the council's previous asbestos management contractors until this contract expired in 2013. Their familiarity with the councils stock, processes, contractors and asbestos register is crucial to maintaining a compliant service, while the procurement of the new contracts is completed and the handover/mobilisation of these contracts is completed.
- 3.4 A request for an exemption from the Code of Procurement Practice is therefore sought to continue the current temporary arrangement with PTL until 1st June 2015 to allow the completion of the procurement process and the award and mobilisation of the new contracts.

4. POLICY FRAMEWORK

- 4.1 The Control of Asbestos Regulations 2012 (CAR) came into force on 6 April 2012, updating previous asbestos regulations, to take account of the European

Commission's view that the UK had not fully implemented the EU Directive on exposure to asbestos (Directive 2009/148/EC).

- 4.2 The Code of Procurement Practice is an integral element of the Council's policy framework. The Code provides for an exemption to be sought where:

'The Council has followed the procedures but the process has not resulted in a suitable supplier being engaged due to reasons beyond officers' normal control and defined responsibility resulting in an interim supplier being appointed to ensure continuity of service while the procurement process reviewed.'

5. **BUDGETARY FRAMEWORK**

- 5.1 The cost of the proposed works is anticipated to be c£70,000 based on historic costs with PTL who have agreed to maintain the schedule of rate charges they used until the expiry of their previous contract if awarded this additional work.
- 5.2 These costs can be met from the allocated asbestos budget for 2014/15 and 2015/16.

6. **RISKS**

- 6.1 One risk is that the council could be challenged regarding the extension of the temporary arrangements by third parties. It is unlikely that such a challenge will be received, moreover officers are confident that the extensions are justifiable and supported by a clear auditable trail of events that have impacted on the asbestos procurement timetable.
- 6.2 Officers consider the greatest risk in this area is the risk of failure to comply with the duties placed on the council by several pieces of health and safety legislation. The possible impacts include:
- Unnecessary health and safety risk for employees, contractors, customers and the general public
 - HSE investigation
 - Prohibition and/or improvement notices
 - Fines and/or prosecution
 - Loss of confidence and reputational damage

The recommendations of this report are made directly to minimise this risk to the lowest possible level.

7. **ALTERNATIVE OPTION(S) CONSIDERED**

- 7.1 The option of undertaking a procurement exercise for the proposed work using a Framework Agreement has been considered, but is not recommended due to the time it would take to procure temporary arrangement through a framework, previous experience of poor services relating to asbestos through available frameworks and the time it would take to handover and train new contractors impacting on the continuity of service and the time officers have to conclude the on-going procurement of longer term arrangements.
- 7.2 In either scenario, if the Council were subject to a HSE inspection and found not to have adequate Asbestos Management arrangements in place, it could be held to be in contravention of Health & Safety legislation which carries risks of fines

and/or persecutory action; Under The Health and Safety (Fees) Regulations 2012, those who break health and safety laws are liable for recovery of HSE's related costs, including inspection, investigation and taking enforcement action.