

# Warwick District Council Code of Procurement Practice

JANUARY 2015



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## **INTRODUCTION**

This code has been revised to reflect the current Public Contract Regulations 2006, EU Procurement Regulations, the Public Services (Social Value) Act 2012 and the Local Government Transparency Code 2014

The code aims to set out how Warwick District Council will procure goods, works and services in line with the above legislation.

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

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

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

This Code should be read in conjunction with the Financial Code of Practice and the Procurement Strategy.

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## **1. PURPOSE**

1.1. The Local Government Act 1972 requires the Council to have standing orders with respect to the making of contracts. They are part of the Council's Constitution and are; in effect the instructions to Council Officers and Members when entering into contracts on behalf of the Council.

1.2. The purpose of this Code is:-

- To set clear rules for the procurement of works, goods and services for the Council
- To ensure a system of openness, integrity and accountability, in which the probity and transparency of the Council's procurement process will be beyond reproach
- To ensure that the Council achieves value for money when acquiring goods, works and services.

1.3 Accordingly this Code will be followed for ALL Procurement activity (with exception of internally recharged services) for:

- The supply of goods to the Council
- The supply of services to the Council; and
- The execution of works for the Council

Or any of the above for which the Council is responsible for payment but are not directly supplied to the Council.

1.4 The Council has a separate Procurement Strategy, which sets out how the Council intends to undertake and improve procurement activity, detailing specific actions.

1.5 All procurement activity over the value of £10,000 will be procured by the Procurement Team working closely with project owners. Procurement activity below this threshold lies with each team / project owner; however the Council has a Procurement team member available for advice and guidance if required, with overall responsibility for compliance with this code and the wider UK and EU legislation.

1.6 The Council is also subject to EU law with regard to procurement, which requires contract letting procedures to be open, fair and transparent. This Code provides a basis for true and fair competition in contracts, by providing clear and auditable procedures, which, if followed, will give confidence that the Council has a procurement regime that is fully accountable and compliant with EU law.

The Code makes provision for the Council to use its purchasing power to assist in delivering elements of the Corporate Strategy and values.

1.7 Wherever used in this document the term "Head of Service" shall be taken to have the same meaning as in the Code of Financial Practice. Heads of Service may delegate Procurement responsibility where appropriate, to senior officers within their control.

- 1.8 This Code should be viewed as an aid to good business practice and not as an obstacle to achieving best practice and value.

## 2. STRUCTURE AND RESPONSIBILITY

2.1 An outline of the responsibilities of Members and Officers is as follows:

- **Executive** – The Executive assume ultimate responsibility for Procurement across the Authority.
- **Finance and Audit Scrutiny Committee** – to promote value for money and good Procurement practice
- **Corporate Management Team** –CMT have responsibility for officer Procurement activity, specifically in accordance with paragraph 3.2.
- **Head of Finance** – Responsible for the procurement team, procurement activity and adherence to the Code.
- **Procurement Manager** – Provides expertise to ensure that all procurement activity undertaken by the Council are transparent, auditable and comply with all relevant local, national and European legislation thus ensuring the Council is exposed to minimal risk in this area and efficient use of resources.
- Senior Management Team - Heads of Service are responsible for Adherence to the Code of Practice within their Service Area ensuring that all Managers in their Area understand the Code, training needs are Identified and provided, maintenance of the Contracts Register ensuring the information held is correct in line with the agreed contract award and that procurement exercises are carried in line with the approved budget.
- Officer Level – All other tasks relating to procurement and the management of contracts are the responsibility of departments in accordance with the scheme of officer delegation.

## 3 ROLE OF THE PROCUREMENT TEAM

- 3.1 The Procurement Team will provide procurement advice and guidance on procurement activity below £10k. All activity above the threshold of £10k the team will manage the process ensuring all procurement activity is carried in line with conditions set with the Code of Procurement Practice and all current Procurement legislation.
- 3.2 Prior to entering into any contract arrangement the Procurement Team must be consulted early on in the process. This should be at the start of considerations, well before any commitment is made. The advantages of this are:-

3.2.1 To give advice on the recommended process to be followed so as to comply with the Code and the Procurement legislation

3.2.2 To establish whether there may be advantages of bringing selected contracts together, for example for economies of scale, or even where there is the requirement to bring contracts together into lots to ensure EU compliance.

3.2.3 To promote and assist with the evaluation and potential use of buying consortia or other available framework agreements, so as to avoid the cost and time of going through the full procurement process and ensure WDC complies with the rules set within the frameworks.

3.2.4 Explore opportunities for collaboration with other local authorities or public bodies to enable the Council to benefit from aggregation.

3.2.5 To give advice for consideration of any inclusions of the Social Value act into the Procurement exercise.

3.3 The guidance and instructions issued by the Procurement Manager or team member should be followed in all instances unless there is good reason why they are not believed to be appropriate. In these cases, it will be for CMT to agree that the Procurement Manager's / teams recommendations are not to be followed, taking into account all known factors and advice.

3.3 Where it is necessary to follow a full tender process, the Procurement Manager will allocate a resource to lead on the tendering for supplies and services.

3.4 For corporate supplies and services, it may be appropriate for the Procurement Manager to take the lead. However, in these instances, the Procurement Manager will need to work with relevant budget holders. The management and monitoring of the contract after tendering will then be the responsibility of a suitable budget manager.

3.5 Where contracts are not in place and the procurement of goods and services is occurring on an 'as required' basis the Procurement Manager or team member will assess if a framework needs to be put in place or another contract within the Council can satisfy the requirement.

#### 4. ORDERING GOODS AND SERVICES

4.1 Goods, works and services must be ordered from the contracted Council supplier, using an established framework (e.g. ESPO, PRO5, Crown Commercial Services) or through any other public sector framework available to the Council to utilise.

4.2 In the event that an established or other public sector framework is selected as a means of delivering goods or services the officer must follow the award procedures set by the framework and observe any set conditions (e.g. mini-competitions) and complete an access agreement linked to the framework.

- 4.3 Where a supplier cannot be identified, for example; a new requirement, then the Procurement Manager must be notified and an agreeable procurement process will be advised.
- 4.4 A purchase order must be raised as instructions to contractors and suppliers, quoting the relevant framework reference number, WDC Contract Reference number or when quotations are requested and accepted, the quotation date, reference included on the order set.
- 4.5 The total value of the order will include VAT, where applicable. The order raiser will need to establish if VAT applies and ensure the correct VAT category and amount is applied to the net value of the order. Queries in respect of VAT should be raised with the Council's VAT Accountant.
- 4.6 Should it be impractical to raise an order, for example in an emergency situation, then an order must be raised the next working day.
- 4.7 No commitment must be placed with a supplier without an official Purchase order or by utilising a Purchasing Card.
- 4.8 Heads of Service must agree the officers within their Service Areas that are permitted to authorise orders and their individual order limits.
- 4.9 Purchase Orders must specify clearly the amount and quality of goods or services to be supplied, the date for delivery, the price to be paid (showing any discounts off regular prices) and any quotation / framework / contract reference. If unsure of what references should be applied contact the Procurement Team.
- 4.10 The Order System will be used, to maintain a record of goods/services ordered, through which Service Areas can verify:
- The receipt of goods/services ordered;
  - The authorisation of payment (so as to prevent duplicate payments).
- 4.11 An annual order should be raised for utility supply arrangements to enable receipting of relevant invoices. Annual orders may be appropriate for other supplies where there is, for example, a fixed monthly charge.
- 4.12 Select lists are no longer held by the Council. Where necessary these will be replaced by framework agreements via ESPO, Crown Commercial Services or other councils. An access agreement will be signed by the Procurement Manager allowing access to the framework.
- 4.13 All gifts and hospitality must be managed in line with the requirements of the member and officer Codes of Conduct.

## **5 DISPOSAL OF ASSETS**

- 5.1 The approach to be taken in respect of the disposal of assets (excluding land and buildings) will depend upon the nature and estimated value of the asset.

- 5.1.1 In the first instance any asset deemed to be of no further use should be offered for re-use within the Council. This can be done via the internet or email to service area managers.
- 5.1.2 For assets worth £19,999 and below Managers should 'have regard' to the need for value for money and equity. Assets should not be sold without competition unless it is clearly sensible to do so. The reasoning must be recorded by the Head of Service. In cases where competition is appropriate, at least two written quotations should be received or the method of electronic auction may be used (e.g. EBay). For the secure disposal of ICT Assets refer to the Council's Information Security and Conduct Policy (ISCP)
- 5.1.3 For assets worth £20,000 and above the Executive approval should be sought detailing the asset and the proposed method of disposal. The method of disposal may be either by formal tender (as described in sections 9-13) or by auction (e.g. EBay or property/land auction)
- 5.2 In the event that electronic auction is selected then this must be through a Council account, under NO circumstances should personal accounts be used.
- 5.3 If a low value asset cannot be sold then consideration should be given as to its suitability to support local charities, voluntary groups and / or parish councils. In the event that this is deemed a suitable route to disposal the Head of Service is responsible for the disposal.
- 5.4 Disposal of land and buildings does not normally fall under the Public Contracts Regulations. However, if the disposal is linked to further outputs or developments then there may be a requirement to comply with the regulations. In considering the proposal to dispose of land or property it is necessary to follow the Code of Financial Practice.

## **6 EXEMPTIONS TO CODE OF PROCUREMENT PRACTICE**

- 6.1 An exemption to the Code of Procurement Practice is a permission to let a contract without complying with one or more of the procedures laid in this document. An exemption may be granted subject to conditions but cannot be granted where a breach of UK or EU legislation may be incurred.
- 6.2 An exemption may be sought when:
  - 6.2.1 It is not practicable or advisable by reason of emergency to seek competitive tenders;
  - 6.2.2 The Council has followed the procedures but the process has not resulted in a suitable supplier being engaged due to reasons beyond officers' normal control and defined responsibility resulting in an interim supplier being appointed to ensure continuity of service while the procurement process is reviewed.
  - 6.2.3 There are exemptional circumstances in which it would not be in the Council's best interests to follow the tender or quotation procedure.



- 6.2.4 In certain extreme circumstances Regulation 14 of the Public Contract Regulations 2006 – Use of negotiated procedures without prior publication of a contract, will apply. Advice should be sort from the Procurement Manager and / or Legal Services (if required) before applying this regulation.
- 6.2.5 Where a 'soft market test' has been carried to understand if there would be interest from the market to provide the service and where this exercise has resulted in only one provider, often this being the current provider, it would be deemed impractical to carry out any further procurement exercises.
- 6.2.6 Where due to particular circumstances there would be a need to extend current arrangements for a reasonable period i.e. to allow other contracts to be aligned, changes in legislation pending that may have an effect on defining the need.
- 6.2.7 When the current contracted supplier goes into liquidation and emergency measures need to be put in place to maintain services until a new tendering exercise has been completed.
- 6.3 In the event that a Head of Service decides that paragraphs 6.1 and 6.2 apply, in the first instance the agreement of the Procurement Manager must be sought. If the Procurement Manager is still in agreement with the decision then a report must be submitted in advance of the exemption coming into force explaining the circumstances and seeking approval on the course of action. In cases of urgency it may be necessary for the Chief Executive to apply the Emergency powers. For exemptions with a total contract value of up to £20k approval should be sort from S151 officer. For total contract values over £20k exemptions should be submitted to Executive for approval. It should be noted that 'lack of time' is not a reason for this application under current legislation or this Code of Practice.
- 6.4 Exemptions not requiring approval by Executive are:
- 6.4.1 Renewal of software licenses or other IT commodity items where the supply is restricted to either the original supplier or their selected re-sellers, and competition does not affect the price paid owing to way the market operates and/or the need for compatibility.
- 6.4.2 Where officers have followed the procedure for 3 quotes but are unable to obtain 3 quotes. This may be due to lack of market response or where there is only a single supplier in the market place. In this case the approval request should still be submitted to the Procurement Manager using the 3 Quote Form with supporting evidence such as copies of quotes to support the exemption.
- 6.4.3 Memberships, publications and subscriptions that are only available to purchase from a single organisation e.g. membership of a housing advisory organisation.

- 6.4.4 In a single source situation where we are restricted to using a particular supplier.
- 6.4.5 A situation where you need to go to the original equipment manufacturer (OEM)
- 6.4.6 Where using an alternative supplier will invalidate warranties.
- 6.4.7 Where it is agreed that an external provider uses our facilities to provide a service ie stage performance and as part of providing this service agree to pay the council a commission.
- 6.4.8 Where the total contract value is up to £20,000, the Head of Finance may agree the exemption in accordance with paragraph 6.3, with the exemption retrospectively reported to the Executive.
- 6.5 Grants, payments to parish councils or similar bodies (where the Council is body responsible for collection of funds via council tax), payments to BID's (Business Improvement Districts, where the Council is the body responsible for collection of funds via business rates), staff salaries and any statutory taxes are not covered by this code as they are not considered to be the procurement of goods, works or services.
- 6.6 Where another public body is procuring goods and services on behalf of the Council, and the Council is contributing to the cost of those goods and services, officers should ensure that appropriate procurement procedures are being followed and agree those with the Procurement Manager.

## **7 PRE-PROCUREMENT PROCEDURE**

- 7.1 Before commencing any new procurement activity above the threshold of £50k, the Head of Service has completed a Business case / Options Appraisal / Project Initiation Document (PID) to identify the business needs and fully assess any and all options for meeting those needs.
- 7.2 Before undertaking the procurement exercise the officer responsible for the activity shall:
  - 7.2.1 Consider all other means of satisfying the need (including recycling and reuse where appropriate);
  - 7.2.2 Consider whether there is an existing appropriate compliant pre-tendered contract available. This may be either a contract let by another public body or a framework agreement let by a purchasing consortium (e.g. Crown Commercial Services, PRO 5, ESPO). It may be necessary to examine a number of frameworks and contracts to find the best value solution;
  - 7.2.3 Consider joint working with one or more other local authorities. Sharing knowledge and resources while aggregating spends should be of benefit. The Procurement team can establish contact with other procurement officers at neighbouring councils to assist with this if this is felt to be a viable option.

- 7.2.4 Consider the criticality of the supply and/or service with regard to business continuity to ensure a smooth transition from the outgoing and incoming contractor;
- 7.2.5 Consider and define the need for a confidentiality document either at the initial outset of the tender phase and/or at the contract stage.
- 7.2.6 Consider any 'Conflicts of Interest' from parties involved in the procurement process, i.e. members' involvement with organisations outside the council.
- 7.2.7 Where appropriate, carry out Soft Market testing to ensure that the requirement can be met by the market.
- 7.2.8 Consideration to Social benefits that can be obtained through the lifetime of the service contract in line with the Public Service (Social Value) Act 2012.
- 7.2.9 Seek the advice and guidance from the Procurement Manager as appropriate.
- 7.2.10 Identify any stakeholders that need to be made aware of the renewal process
- 7.2.11 Consult with Finance or service accountant to determine the approved available budget, where the existing budget may be insufficient to cover current costs of such a contract. Any monies to be drawn from the Reserves must follow the due approval process prior to commencing the procurement process
- 7.2.12 Where it is agreed to carry out a new tendering exercise the Council should make best use of its purchasing power by aggregating purchases wherever possible. Consideration should be given to lots to encourage participation from SME's.

## **8 ESTIMATING THE VALUE OF CONTRACT**

- 8.1 The contract value should be estimated using the total cost of ownership (to include full costs of acquisition, use and disposal) for the term of the contract.
- 8.2 Ensuring the contract value is a true reflection of the business need as this will govern the type of contract and the correct procurement route.
- 8.3 Particular attention should be paid when considering the use of Consultants ensuring that the scope and the length of contract are clearly defined. A reasonable contingency should be applied to the project budget to cover additional unforeseen expenditure. When considering using Consultants it is important to monitor the contract closely to avoid escalation of costs through follow on work. See section 13.
- 8.4 The value of a contract to the Service Area should not be viewed in isolation as the regulations are concerned with the aggregated spend / value of a commodity to the Council as a whole.

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

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

## 9 CONTRACT TYPES

9.1 The Procurement Procedure will be defined according to the estimated value. Contract values must not be split in order to change the contract process.

The estimated value including any extensions, will be for the term of the contract. This may be a fixed term for project type work.

TYPE	CONTRACT PRICE	PROCEDURE
1	<£9,999	Head of Service to obtain at least three quotations. Regard must be given for best value.
2	£10,000-£49,999	Formal quotation exercise to be advertised extensively via e-tendering portal using the 'quick quote' function and through advertising on Contracts Finder
3	£50,000-EU Threshold	Formal Tender opportunity for goods, works or services above £50,000 advertised extensively via the e-tendering portal and any other portals, specialist forums etc and through Contracts Finder, to ensure that as wide a market as possible has the opportunity to respond to the opportunity (as detailed in 10.7), to be sought in accordance with the tendering procedures.
4	>EU Threshold	Tendering in accordance with EU procurement directive. Threshold values can viewed at <a href="http://www.bipsolutions.com/html/thresholds.htm">http://www.bipsolutions.com/html/thresholds.htm</a>
5	Frameworks	Following the procedures set out in the framework without the need to go back to the market.

9.2 In the event that the minimum number of quotations or tenders cannot be obtained for reasons of insufficient suppliers within the market, the Head of Service in conjunction with the Procurement Manager will have the final decision in whether to proceed or to redesign the specification. See 6.2

9.3 Where the spend is agreed by the relevant Head of Service and Procurement Manager to be classed as low value / low spend, the Council's Purchasing Cards can be used in such circumstances. In such cases the instruction on the use of the Purchasing card must be adhered to.

## **10 TENDERING PROCEDURES**

10.1 Subject to any overriding statutory enactment this tender procedure applies in relation to any and all type 2, 3 and 4 contracts.

10.2 For type 2 contracts a formal quotation process needs to be followed.

10.2.1 The 'Quick Quote' process within the e-tendering portal to be used as a call for competition.

10.2.2 Advertise the requirement on Contracts Finder.

10.3 For type 3 contracts a formal tendering process to be followed.

10.3.1 A formal tendering project to be carried out using the e-tendering portal.

10.3.2 The requirements will be linked to Contracts Finder.

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

- Open Procedure – where only a limited number of potential suppliers are likely to respond.
- Restricted Procedure – where there are potentially many suppliers likely to respond and a pre-tender selection is required.
- Negotiated Procedure – for complex tenders where neither of the above is suitable.
- Competitive Dialogue – for highly complex tenders where none of the above are suitable or the solution cannot easily be identified.

10.4.1 Where it is agreed to follow a restricted procedure documents will include for a 2 stage tendering process - stage 1 the Pre – Qualification Questionnaire (PQQ) for the Public Sector and stage 2 the Invitation to Tender (ITT)

10.5 For type 2 contracts a clear specification and pricing schedule needs to be developed for publishing to the market. An evaluation criteria and scoring matrix needs to be available for consideration.

10.6 At the time of publishing the call for competition for type 3 and 4 contracts, clear background information, specifications and pricing schedules, as required by the Procurement Manager, including the evaluation criteria and scoring matrix, needs to be available for consideration. Service level agreement and key performance indicators should be included and used as a tool to manage the performance during the life of the contract. All KPI's should be SMART (specific, measurable, achievable, realistic and timely) and not onerous. ALL contract documentation needs to be prepared to be published as part of the process.

10.6 Where possible tenders will be let as framework agreements for use by other local authorities, where applicable.

- 10.7 All tender opportunities will be advertised via the CSW-JETS e-tendering portal by the Procurement Team. Advertisements will also be advertised through Contracts Finder and on our external web site, while those above EU thresholds will be sent to the OJEU. The advertised opportunity will have links to the documents for consideration and will include the date, time and the process for the return of the completed documents to the originator.

## **11 CUSTODY, OPENING AND ACCEPTANCE OF TENDERS**

### **11.1 Receipt of Quotations / Tenders**

- 11.1.1 Quotations / Tenders will be returned via the e-tendering portal and will not be available for opening until after the closing time / date where an opening ceremony via the system will take place. In exception circumstances due to technical reasons we reserve the option of accepting tenders via an alternative method to be agreed. No quotation / tender will be available to view until after this event. WDC operate an anonymous submission system and names of tenderers are not revealed until after the submission deadline.

### **11.2 Opening**

- 11.2.1 The e-tendering system records the time quotes / tenders are submitted.
- 11.2.2 Once the quote / tender has been opened it is only then that the name of the tenderer is revealed.

### **11.3 Late Quotations / Tenders**

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

### **11.4 Altered Quotes / Tenders**

- 11.4.1 If examination of an apparently successful quote / tender reveals any errors which affect the quote / tender figure, the tenderer is to be given details of the error and given the choice of either confirming the tender figure or withdrawing the tender except:
- 11.4.1.1 where the priced specification/schedule of works/schedule of rates/bills of quantities is submitted

with the quote / tender, errors in any of those documents may be corrected and tender sums amended accordingly; or

- 11.4.1.2 by approval of the Executive after considering a report by the appropriate Head of Service.

## 11.5 Evaluation of Quotes / Tenders

- 11.5.1 Evaluation must be carried out in an objective, fair and transparent manner using the criteria specified in the documentation (PQQ and/or ITT) with all scores and relevant comments recorded.
- 11.5.2 Evaluation must be carried on a 'most economically advantageous tender' (MEAT) basis, that is a mix of price and award criteria in order to identify the best value tender for the Council. In exceptional circumstances, and for goods only, may the lowest price selection criteria be used and this will be subject to the permission of the Procurement Manager.
- 11.5.3 All calculations, not / comments relating to the selection and the award process must be kept for the term of the contract. The individual score awarded must be given to the tenderer as part of the communications at the contract award stage (mandatory part of the UK Remedies Directive 2009).

## 11.6 Acceptance of Tenders

- 11.6.1 Following the evaluation process a Recommendation Report needs to be compiled bringing together the process followed, evaluation details, shortlisted suppliers, reasons for interviews if applicable and reasons for recommendation. This needs to be signed off by the Project lead, Procurement and Budget Holder before communicating outcome to the successful tenderer. In certain circumstances where funding is being provided from an external organisation eg Heritage Lottery Fund, Friends Groups, acceptance of the recommendation may need to be obtained.
- 11.6.2 The Head of Service concerned may then formally accept the most economically advantageous tender (MEAT), provided that:
  - 11.6.2.1 the amount of the MEAT tender can be met from within the revenue budget (including any available virement); or
  - 11.6.2.2 the amount of the MEAT tender, together with any other scheme costs (e.g. fees, capital, salaries, post-contract services etc.) can be met from within the capital programme provision for the scheme/groups of similar schemes and that Executive approval for the capital expenditure has previously been granted,
  - 11.6.2.3 Where a tender cannot be accepted by the Head of Service concerned because of the budget limitations of

paragraphs 10.6.1.1. and 10.6.1.2. above, a report should be submitted to the Executive outlining the position and the options. It will then be a matter for the Executive to decide whether to proceed on a reduced basis, how the shortfall will be funded in line with the Financial Code of Practice, or not to proceed with the scheme.

- 11.7 The intention to award a contract must be communicated in writing to all suppliers that have declared an interest in the process. This should be done as soon as possible once an agreement has been obtained. This should be by formal letter. For contract above £50k the communication needs to include details of;

11.7.1 Criteria for the award of the contract

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

11.7.3 Any reasons for the decision including the characteristics and relative advantages of the successful supplier

11.7.4 The name of the successful supplier

11.7.5 The right to appeals or challenge and how this can be done

11.7.6 The date that the standstill period will end

For contracts of types 1-4 this level of information is not required. Although for transparency this may be advantageous.

- 11.8 Details of all contracts accepted and awarded will be recorded on the central Contract Register, maintained by the Procurement team. The register will be published on the Councils website quarterly. (Items of a highly confidential nature will not be published).
- 11.9 An annual report of all contracts awarded during the preceding twelve months will be made available to the Finance and Audit Scrutiny Committee. This will be supplemented by a six monthly interim update, for information only.
- 11.10 The successful tender and material associated with the tender process (emails, letters etc.) should be retained for a period of three years from the end/completion of the contract and be available for audit. Unsuccessful tenders should be retained for a period no less than 7 months from the award date in line with Councils retention policy.

## **12 FORM AND CONDITIONS OF CONTRACT**

- 12.1 The officer responsible for the contract shall at the start of the process ensure that the specification is clear and meets all the business needs of the requirement. Procurement will ensure that contracts awarded are sufficiently clear and robust to enable the Council to enforce their execution and fulfilment. Contracts can be bespoke, industry standard



(e.g. JCT) or made on Warwick District Council's standard terms and conditions of goods or services as appropriate.

12.2 Contracts will clearly state:

- Work to be carried out/goods to be supplied, together with a definite quality of provision;
- The price, any discounts and (where appropriate) a means of defining price adjustments for any subsequent amendment of requirements and the mechanism for inflationary increases;
- Time by when (or during which) the contract is to be carried out;

12.3 Contracts will also specify the Council's expectations of its contractors in relation to aspects of the Sustainable Community Strategy and Fit for the Future, e.g.

- Employment practices must reflect good practice in equality and diversity.
- Payment terms to subcontractors should mirror those that the Council agrees to the contract holder eg: number of days to pay third party suppliers in line with Government guidelines.
- Consolidation of invoices. The Council preference is for monthly billing but shorter frequencies may be acceptable depending on the supplier and the expenditure
- All Health and Safety requirements must be met.
- Business Continuity and emergency availability for key services and supplies.
- Environmentally sustainable working practices. The need, where appropriate, for equipment/systems to comply with EU requirements, and any other current legislation.
- Performance and complaints monitoring and reporting.

Procurement in consultation with Legal Services will determine if the contract requires the provision of a performance bond or parent company guarantee, or the provision for liquidated damages.

12.4 Contracts should provide powers for the Council to cancel the contract and recover any resulting losses from the contractor in the event that the contractor, its employees or agents (with or without its knowledge):-

12.4.1 improperly offers or gives anyone anything or benefit in order to influence the way in which any contract with the Council is given, completed or carried out; or,

12.4.2 Commits any offence under the Prevention of Corruption Acts 1889 to 1916, section 117(2) of the Local Government Act 1972 or any consolidating or amending legislation.

12.5 All contracts should be duly signed by both the Council and supplier before any services are commenced or goods ordered.

12.5.1 Legal advice may be sought before any contract can be put forward for signing.

12.5.2 Only those officers and managers identified as approved may sign and execute contracts on behalf of the Council. Type 1 Authorisation will be at the point of order approval. Contracts of type 2-4 may be signed by a Head of Service (or any officer above this level). For contracts of type 5 only officers that are members of CMT or the S151 Officer may sign. Where contracts are to be executed as a deed, under the scheme of delegation reference G(1), these can only be signed by the Chief Executive or the Deputy Chief Executives.

12.5.3 All signed contracts to be stored in the Central Document Store in line with the Council's Retention Policy

### **13 APPOINTMENT OF CONSULTANTS**

13.1 The appointment of a Consultant falls into two categories: a Consultancy service or the needs of a specialist Consultant, individual. Defining the specific requirement will ensure the correct contract is awarded.

13.2 A Consultancy service includes:

- A service from a company to provide specialist advice to deliver a particular project such as building consultants (architects, quantity surveyors, structural engineers etc.)

13.3 A specialist Consultant includes:

- Need to employ the skills and expertise of an individual such as employment specialist, training

13.4 A Consultant will be appointed after following the required procurement process.

13.5 The requirements from the Consultant need to be clear covering all business needs. Where there may be a need for any potential additional services above the original scope of works, these need to be allowed for in original tender / quotation document.

13.6 The choice of a consultant will be based on price and their ability to deliver to a particular brief as part of the selection / award criteria.

### **14. POST PROCUREMENT PROCEDURE & CONTRACT MANAGEMENT**

14.1 Contract management is the process which ensures that both parties to a contract fully meet their respective obligations as efficiently and effectively as possible, to ensure the contract delivers the business and operational objectives requirements

14.2 Service level agreement and key performance indicators should be applied and used as a tool to manage the performance during the life of the contract. All KPI's should be SMART (specific, measurable, achievable, realistic and timely) and not onerous.

14.3 A clear contract management plan should be developed for managing the contract to ensure delivery of the required outputs from the contract using

the agreed measures. A clear escalation process needs to be understood and accepted for the management identified issues.

- 14.4 Regular meetings should be agreed in advance to allow the exchange of information between the supplier and the contract manager. It should be noted that this is a two-way process and that both parties should be looking to develop the contract for mutual benefit (taking care not to fundamentally change the specification of the contract that was awarded).
- 14.5 All contract management meetings should be formally recorded
- 14.6 There should be continuous assessment and management of the risks to service delivery and this should be detailed on the department Risk register.
- 14.7 The contract manager should regularly (annually and/or prior to any extension or renewal) check the Council is continuing to achieve VFM by regularly testing for example price benchmarking or market testing with support from the Procurement team.
- 14.8 Depending on the precise nature of the contract, administration and change management activities may focus on: Cost monitoring and forecasting, ordering, payment and budget monitoring procedures, Resource management, forward planning, management reporting systems, asset management.
- 14.9 Any cost variations should be reported to Finance as part of the monthly Budget Review Process. This must be in line with the Budget Management responsibilities within the Financial Code of Practice and Budget Protocol.
- 14.10 In the event of poor supplier performance, the contracts manager should make financial deductions where relevant (the contract should have provision for this). This should only be employed where other mechanisms for resolution of the performance have failed to achieve the required standard.
- 14.11 It is permissible to work with suppliers on a voluntary basis, after contract award, to improve their environmental and/or social performance. This is in addition to those requirements included in the contract. For example, putting in place measures to reduce energy use or recycle packaging.
- 14.12 A contract may only be extended in accordance with the provisions set out in the original advertisement. Extensions of contracts beyond the provisions set will be in contravention to this Code and the wider EU legislation.  
  
All amended contract information, such as price, once approved should be communicated to the Procurement team to enable the Contracts Register to be amended and updated.
- 14.13 All variations to contracts need to be stored with the original signed contract in the Deed Store.

## **15 NON-COMPLIANCE WITH THE CODE**

- 15.1 Any case of non-compliance with this Code of Practice, the EU Procurement Regulations (as incorporated into English Law) must be reported immediately to the Head of Finance. A report should also be submitted to the next available Executive. Non-compliance may be subject to action under the Council's Disciplinary Policy.

## **GLOSSARY**

<b>Best Value</b>	Best Value can be defined as obtaining the right quality goods or services at the right time in the right place at the best price.
<b>CBC</b>	Central Buying Consortium. A buying organisation set up by a group of Local Authorities to offer complaint goods and contracts for use by other Public Sector organisations.
<b>CMT</b>	The Council's Corporate Management Team (comprising the Chief Executive and the two Deputy Chief Executives)
<b>Competitive Dialogue Procedure</b>	For tenders subject to Public Contracts Regulations. A complex procedure where the method of delivery for the supply goods, works and/or services is unknown and needs to be resolved through negotiation with suitable suppliers. Legal justification is required.
<b>EBAY</b>	Electronic reverse auction website.
<b>ESPO</b>	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.
<b>EU</b>	European Union
<b>EU Thresholds</b>	The levels above which goods, works and services must be tendered in accordance with the Public contracts Regulations 2006. Levels are revised every 2 years and published.
<b>Framework</b>	A type of contract with 1 or 3+ suppliersthat has no specified amount of goods , services or works but sets out how these would be purchased should the need arise.
<b>CCS</b>	Crown Commercial Services. A buying organisation set up by Central Government to offer complaint goods and contracts for use by other Public Sector organisations.
<b>ITT</b>	Invitation to Tender. The main tender document sent to suppliers.
<b>MEAT</b>	Most Economically Advantageous Tender
<b>Negotiated Procedure</b>	For tenders subject to Public Contracts Regulations. A complex procedure which should only be used when no other procedure is suitable. This has largely been replaced by the Competitive Dialogue procedure.

<b>OJEU</b>	Official Journal of the European Union where all contracts over the EU Threshold will be published.
<b>Open Procedure</b>	For tenders subject to Public Contracts Regulations. A single stage procedure under which any supplier can tender to supply goods, works and/or services.
<b>Orders System</b>	The finance software which is used to generate purchase orders.
<b>PQQ</b>	Pre-qualification Questionnaire. The first stage of a 2 stage tender process whereby a large number of suppliers are reduced to a smaller number based on pre-determined criteria, before the issue of the main tender documentation.
<b>PRO 5</b>	Collaboration group of purchasing organisations consisting of ESPO, NEPO, CBC and YPO. The group purchases on behalf of the public sector under the PRO 5 structure in order to maximise the benefits of aggregation.
<b>Procurement</b>	The process of acquiring goods, works and services supplier.
<b>Public Contracts Regulations 2006</b>	The procedures under which all purchases for goods, works and services above a set value must be followed.
<b>Public Service (Social Value) 2012</b>	
<b>Restricted Procedure</b>	For tenders subject to Public Contracts Regulations. A two stage procedure under which any supplier can return a PQQ but only selected suppliers (from evaluation of the PQQ) are invited to tender to supply goods, works and/or services.
<b>TUPE</b>	Transfer of Undertakings of Persons Employed. The legal framework under which personnel provided for a specific contract have protection in their employment and can be transferred to a new service provider in the event the contract is awarded to a different supplier.
<b>UK Remedies Directive 2009</b>	An amendment to the Public contracts Regulations 2006 setting out how contractors can challenge the procurement process.

**VFM**

Value for money

**WDC**

Warwick District Council

**WMRIEP**

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