

WARWICK DISTRICT COUNCIL CODE OF CONTRACT PRACTICE

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INTRODUCTION

This code has been revised to include recent changes in legislation including case law and the EU Remedies Directive 2009.

The code sets out how Warwick District Council will procure goods, works and services.

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

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

Melanie Gillman MCIPS – Procurement Manager WDC

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 for making 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 and 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. Accordingly this Code must be followed for ALL contracts (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.

1.3. The Council has a Procurement Strategy, which is the policy of the Council setting out how the Council intends to undertake and improve procurement activity.

1.4. The Council operates devolved procurement. This means that responsibility for procurement activity lies with each section. However, the Council has a Procurement Manager available for advice and with overall responsibility for compliance with this code and the wider UK and EU legislation.

1.5. 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.

1.6. The Code makes provision for the Council to use its purchasing power to assist in delivering elements of the Corporate Strategy, for example:-

- ensuring that environmental concerns are reflected by requiring contractors to follow sustainable practices as detailed in the Environmental Procurement Policy (Appendix A);
- requiring contractors to employ the sort of equal opportunity policies which this Council itself employs.

1.7. Wherever used in this document the term "Senior Manager" shall be taken to have the same meaning as in the Code of Financial Practice.

1.8. This Code must be used in conjunction with the Procurement Strategy.

1.9. This Code should be viewed as an aid to good management and not as a hindrance.

2. ROLE OF THE PROCUREMENT MANAGER

2.1 Prior to entering into any contract arrangement the Procurement Manager must be consulted early on in the process. This should be at the start of considerations, well before any tender documents are prepared. The advantages of this are:-

2.1.1 The Procurement Manager will be able to advise on the process to be followed so as to comply with the Council's Code of Contract Practice and the Public Contracts Regulations.

2.1.2 By overseeing all contracts, the Procurement Manager will get the overall view as to 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 to ensure EU compliance.

2.1.3 The Procurement Manager will be able to promote and assist with the use of buying consortia or other available framework agreements, so as to avoid the cost and time of going through the full procurement process.

2.2 The guidance and instructions issued by the Procurement Manager 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 recommendations are not followed, taking into account all known factors and advice.

2.3 The Procurement Manager will not normally lead on the tendering for supplies and services. For complex projects, it will be appropriate that the Procurement Manager will be part of the project team managing the procurement.

2.4 For corporate supplies, 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 of the contract after tendering will then need to be the responsibility of a suitable budget manager.

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

3. ORDERING GOODS AND SERVICES

3.1. Goods, works and services must be ordered from the contracted Council supplier, a buying consortium (e.g. ESPO, West Mercia Supplies, Buyingsolutions) or through a public sector framework available to the Council.

- 3.2. In the event that a buying consortium or other public sector framework is selected as a means of delivering goods or services the officer must follow the selection procedures set by the consortium and observe any conditions (e.g mini-competitions).
- 3.3. Where a supplier cannot be identified, for example; a new requirement, then the Procurement Manager must be notified.
- 3.4. Unless impractical, written instructions (fax and email are also acceptable) should be transmitted to contractors and suppliers.
- 3.5. Instructions should specify clearly the amount and quality of goods or services to be supplied, the date for delivery and the price to be paid (showing any discounts off regular prices).
- 3.6. The Orders 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).
- 3.7. Where orders are placed on a website through a compliantly let agreement this will be deemed to be the method by which records of the goods/services is maintained.
- 3.8. Where it is not practical to issue a written instruction for a service (e.g. continuing supply arrangements such as electricity, gas, telephone etc) the Orders System must be used so that records are maintained of the expected costs of supply (unit costs etc.) and accounts which have been authorised for payment.
- 3.9. Goods or services should be ordered in a timely manner to reduce the need to hold stock. This will be a balance between minimising stock levels and reducing excessive deliveries.
- 3.10. Select lists will no longer be held by the Council. Where necessary these will be replaced by framework agreements valid for a period not to exceed 4 years.
- 3.11. All hospitality must be recorded in the register of hospitality at the earliest opportunity.

4. DISPOSAL OF ASSETS

- 4.1. The approach to be taken in respect of the disposal of assets will depend upon the nature and estimated value of the asset.
 - 4.1.1. 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.
 - 4.1.2. 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 Senior Manager. 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). There is a separate internal guidance on the disposal of computer equipment that should be followed in appropriate circumstances.
 - 4.1.3. For assets worth £20,000 and above Executive Committee 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)
- 4.2. In the event that electronic auction is selected then this must be through a Council account, under NO circumstances should personal accounts be used.
- 4.3. If a low value asset cannot be sold then consideration should be given as to its suitability for use by a charity or other voluntary organisation. In the event that this is deemed a suitable route to disposal the Senior Manager is responsible for the disposal.
- 4.4. Disposal of land 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 Council's Principles for Strategic Asset Management.

5. EXCEPTIONS TO CODE OF CONTRACT PRACTICE

- 5.1. An exception to the Code of Contract Practice is a permission to let a contract without complying with one or more of the procedures laid in this document. An exception may be granted subject to conditions but cannot be granted where a breach of UK or EU legislation may be incurred.
- 5.2. An exception may be sought when:

- 5.2.1. It is not practicable or advisable by reason of emergency to seek competitive tenders;
- 5.2.2. The Council has followed the procedures but the process has not resulted in a suitable supplier being engaged due to reasons beyond officers' control and an interim supplier is required to ensure continuity of service while the procurement process reviewed.
- 5.2.3. There are exceptional circumstances in which it would not be in the Council's best interests to follow the tender or quotation procedure;
- 5.3. In the event that a Senior Manager decides that paragraphs 5.1 and 5.2 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 Executive Committee, explaining the circumstances and seeking approval on the course of action. It should be noted that 'lack of time' is not a reason for this application under current legislation.

6. PRE-PROCUREMENT PROCEDURE

- 6.1. Before commencing any procurement activity, it is essential that the Authorised Officer leading the procurement has identified the need and fully assessed any and all options for meeting those needs. Consideration shall be given to the Council's Procurement Strategy as appropriate.

7. ESTIMATING THE VALUE OF CONTRACT

- 7.1. The Council should make best use of its purchasing power by aggregating purchases wherever possible. Particular supplies, services and works shall not be split (either in reducing the contract term or dividing the contract into smaller portions) in attempt to avoid the applicability of these contract standing orders or the Public Contracts Regulations.
- 7.2. Contract value should be estimated using the total cost of ownership (to include full costs of acquisition, use and disposal) and the term of the contract.
- 7.3. The contract value is important as it governs the type of contract and the route chosen to source the supplier. Value also impacts on the budget.
- 7.4. Particular attention should be paid when employing Consultants that the scope and length of contract are clearly defined. A reasonable contingency should be applied to the project budget to cover additional unforeseen expenditure. When employing Consultants it is important to monitor the contract closely to avoid escalation of costs through follow on work. See section 12.

7.5. The value of a contract to Service Area should not be viewed in isolation as the regulations are concerned with the total value of a commodity to the Council as a whole.

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

7.5.2. 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.

8. CONTRACT TYPES

8.1. Contracts will be defined according to the estimated value.

8.2. The estimated value will be for the term of the contract. This may be a fixed term for project type work. Only in exceptional circumstances should this exceed 4 years.

| TYPE | CONTRACT PRICE | PROCEDURE |
|------|----------------------|---|
| 1 | <£5,000 | Senior Manager to arrange directly in consultation with the Procurement Manager. Regard must be given for best value. |
| 2 | £5,001 -£19,999 | Senior Manager to obtain at least three written quotations. |
| 3 | £20,000-EU Threshold | Contract opportunities above £20,000 should be advertised extensively (electronically) to ensure that as wide a market as possible has the opportunity to respond with formal tenders (as detailed in 9-11) to be sought in accordance with the tendering procedures. |
| 4 | >EU Threshold | Tendering in accordance with EU procurement directive. Threshold values can viewed at http://www.bipsolutions.com/html/thresholds.htm |

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

9. TENDERING PROCEDURES

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

9.2. 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.

9.3. Where possible tenders will be let as framework agreements for use by other Local Authorities within the WMREIP (West Midlands Regional Improvement and Efficiency Partnership) area.

9.4. All tender opportunities must be advertised. Advertisements should be sent through the 'Project' software at www.delta-ets.com. Low value tenders will be advertised through supply2.gov, while those above EU thresholds will be sent to the OJEU. The advertisement shall contain particulars of the contract, how documents can be accessed and the date and time for return of the completed documents.

9.5. Documents should be made available through the secure document exchange 'vault' at www.delta-ets.com

9.6. Documents should include (for 2 stage tendering these will be split across the Pre –Qualification Questionnaire (PQQ) and the Invitation to Tender (ITT)):

- A description of the goods and/or services required;
- The procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders. Note for type 4 contracts minimum timescales apply depending on the procedure selected;
- A specification and detailed information the use of selection and award criteria instructions on whether any variants are permissible;
- A requirement to return the last 3 years accounts;
- A questionnaire regarding the company structure, its policies and procedures and the requirement to submit supporting evidence.
- If the supply/service is business critical then the requirement for a rapid response to a call must be incorporated;
- The Council's terms and conditions of contract (see 11.2);

- The evaluation criteria (see 9.7). This should also include any stages to the selection e.g. interviews and possible dates;
- Pricing mechanism and instructions for completion;
- Whether the Council or supplier is of the view that TUPE may apply;
- Form and content of method statements to be provided;
- Rules for submitting of tenders.
- Any further information which will inform or assist tenderers in preparing the tender.

9.7. The evaluation criteria should be clear and any sub criteria with weightings identified. Suggested criteria include;

- Price
- Financial stability assessed from the last 3 years accounts. This assessment will be carried out by Finance and will include where possible credit checks;
- Any formal views of referees;
- Health and Safety Policy. All contractors must have a policy relevant to the business carried out for the protection of its employees and the general public;
- Environmental Management system commensurate with the type and value of the work to be carried out. Actively working to reduce environmental impact during the course of the contract execution;
- The experience of the contractor in relation to the type of contract to be let, such as references or CV's;
- Disaster recovery procedures and out of hours availability should be assessed for key services such as those involving property;
- Equal opportunities and diversity policies commensurate with the type and value of the work to be carried out. As a minimum a good understanding and willingness to align with the Council's own policies will be requested.

9.8. Criteria used for selection at the PQQ stage may not be re-evaluated at the award stage. It is advisable to use past or current information for the PQQ stage and proposed information for the award stage.

9.9. Any clarification questions or requests for information must be communicated to all tenderers simultaneously preferably through the delta-ets software. This ensures anonymity among tenderers and a full audit trail of communication.

9.10. Requests for extensions of the tender timetable may be granted in exceptional circumstances in consultation with the Procurement Manager, and only if the project board agrees there is sufficient reason. In this case all tenderers must be informed of the extended deadline.

10. CUSTODY, OPENING AND ACCEPTANCE OF TENDERS

10.1. Receipt of Tenders

- 10.1.1. Tenders will be returned to the delta-ets vault and will not be available for opening until after the closing date.
- 10.1.2. If documents are received in paper format they must be held in a secure area under the custody of the Senior Manager or Procurement Manager until they are opened.

10.2. Opening

- 10.2.1. All tenders received by the specified time must be accessed or opened at the same time in the presence of at least two people.
- 10.2.2. Where the estimated value of the proposed contract is of type 4 then the opening process for final tenders containing pricing must involve a member of the Executive or a Council member nominated by the Executive. It is not necessary to have a member present for receipt of PQQ documentation.
- 10.2.3. The person responsible for the tender process must ensure that a list is compiled of the companies and the tender amounts (unless this is not practical at that time, e.g. because it is a schedule of rates contract). The list should be signed by at least two of those present to confirm the amounts and compliance of the process.

10.3. Late Tenders

- 10.3.1. Late 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.

10.4. Altered Tenders

- 10.4.1. If examination of an apparently successful tender reveals any errors which affect the 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:
 - 10.4.1.1. where the priced specification/schedule of works/schedule of rates/bills of quantities is submitted with the tender, errors in any of those documents may be corrected and tender sums amended accordingly;
or
 - 10.4.1.2. by approval of the Executive after considering a report by the appropriate Senior Manager.

10.5. Evaluation of Tenders

- 10.5.1. Evaluation must be carried out in an objective, fair and transparent manner using the criteria specified in the documentation (PQQ and/or ITT).
- 10.5.2. 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.
- 10.5.3. All calculations 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).

10.6. Acceptance of Tenders

- 10.6.1. The Senior Manager concerned may accept the most economically advantageous tender provided that:
 - 10.6.1.1. the amount of the MEAT tender can be met from within the revenue budget (including any available virement);
or
 - 10.6.1.2. 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,
 - 10.6.1.3. Where a tender cannot be accepted by the Senior Manager 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, and/or whether to apply to approve or request from the Council a supplementary estimate or whether to proceed no further with the scheme.
- 10.7. The intent to award a contract must be communicated in writing to all suppliers that have declared an interest in the process. This should be done by the most rapid means – an email attachment will be the preferred method. For type 4 contract this must include details of:
 - 10.7.1. Criteria for the award of the contract
 - 10.7.2. The score achieved by the successful supplier and the tenderers score
 - 10.7.3. Any reasons for the decision including the characteristics and relative advantages of the successful supplier
 - 10.7.4. The name of the successful supplier
 - 10.7.5. The right to appeals or challenge and how this can be done

10.7.6. The date that the standstill period will end

10.8. For contracts of types 1-3 this level of information is not required. Although for transparency this may be advantageous.

10.9. Details of all contracts accepted and awarded shall be given to the Procurement Manager. These details will be recorded on a central register maintained by the Procurement Manager. The register will be published on the Council website (items of a highly confidential nature will not be published).

10.10. An annual report of all contracts awarded during the preceding twelve months will be made available to the Council Executive.

10.11. 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.

11. FORM AND CONDITIONS OF CONTRACT

11.1. Senior Managers are responsible for ensuring that contracts let by them are sufficiently clear and robust to enable the Council to enforce their execution and fulfilment.

11.2. Contracts should be bespoke, industry standard (e.g. JCT) or made on Warwick District Council's standard terms and conditions of goods or services as appropriate.

11.3. Contracts should clearly state:

- Work to be done/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;
- Time by when (or during which) the contract is to be carried out;

11.4. Contracts should also specify the Council's expectations of its contractors in relation to aspects of the Corporate Strategy, e.g.

- Employment practices must reflect good practice in equality and diversity.
- All Health and Safety requirements must be met.
- Business Continuity and emergency availability for key services and supplies.
- Environmentally sustainable working practices - see Environmental Procurement Policy and Guidance,

- The need, where appropriate, for equipment/systems to comply with EU requirements,
- Performance and complaints monitoring and reporting.

11.5. Senior Managers should also consider whether the contract conditions should include the following (this will depend on the nature of the contract and if the purchase is from revenue or capital funds):-

the provision of a performance bond or parent company guarantee for contracts above £200,000 in total value. (The expected norm is that a bond of 10% of the value of the contract (or its annual value where the contract relates to continuing service) is obtained. The Head of Finance should be asked to satisfy himself as to the financial stability of any proposed bond provider).

- the provision for liquidated damages to be paid to the Council in the event that the contract is not completed in the time specified. For contracts of over £50,000 the expected norm is that provision for liquidated damages should be made.

11.6. 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):

11.6.1. 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,

11.6.2. 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. APPOINTMENT OF CONSULTANTS

12.1. It is recognised that the appointment of consultants cannot always be carried out on the basis of an assumption of a pre-defined quality of service. The reality is that consultants will have a range of different skills and expertise.

12.2. The choice of a consultant will, generally therefore, be a mixture of price and (subjective) views of their ability to deliver to a particular brief.

12.3. This part of the Code deals with the special needs of how this subjective element can be brought into the selection decision.

12.4. Appointment of consultants falls into two categories:

12.4.1. Those for which there is a regular flow of work - such as building consultants (architects, quantity surveyors, structural engineers, mechanical and electrical engineers, standard Estate Agency work, geo-technical advisers etc).

12.4.2. Those for which usage is essentially infrequent. These might be anything from public relations, financial services, specialist civil engineers, specialist Estate Agency work, etc.

12.5. Regular Consultants (e.g. building consultancy services)

12.5.1. A framework contract for professional consultancy services, fully compliant with the Public contracts Regulations and EU Regulations will be let on a 4 yearly basis.

12.5.2. Each consultancy service will hold between 5 and 8 approved suppliers. The suppliers will have been approved on the basis of the OJEU tender process and terms of engagement will have been agreed.

12.5.3. When a consultant is required for a specific project an invitation to tender will be issued to all those on the framework capable of fulfilling the need.

12.5.4. The most economically advantageous tender will be awarded the consultancy contract. This may not be the lowest price but a combination of price, availability and skill or other such criteria as specified in the ITT (but not previously used in the pre-selection criteria).

12.6. Ad-hoc Consultancy

12.6.1. It is impractical to maintain approved lists of consultants for those activities for which use is infrequent.

12.6.2. All contracts involving consultants must be calculated to include a realistic estimate of cost with a level of contingency included. It is important that follow on work is avoided and contract values are calculated as described in 7.2. If follow on work is likely, the value of this needs to be assessed and reflected in the contract value, with the contract documentation clearly spelling out the situation. Almost all projects involving consultants exceed the original budget by virtue of the project environment.

12.6.3. Where the consultancy cost estimates are close to the EU threshold values the contract should be tendered as EU compliant. This may be achieved by using one of the consultancy frameworks let by buying consortia such as ESPO or Buyingsolutions or by the full tender process. Preference will be given to the use of already tendered frameworks by buying consortia and will only be tendered if the need cannot be met by one of the available frameworks. The contract notice should be issued showing the range of the estimates of the contract price. This will ensure that no challenges can be made should the costs exceed the threshold values.

13. NON-COMPLIANCE WITH THE CODE

13.1. 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.