

Agenda Item No:	12	
Committee:	Corporate Governance Committee	
Date:	14 July 2015	
Report Title:	Update to the Code of Procurement	

## Cover sheet:

### 1 Purpose / Summary

To consider changes to the Code of Procurement as a result of the Public Contracts Regulations 2015 and recommend them to Council for adoption.

### 2 Key issues

- The Code of Procurement describes the way the Council procures goods and services and is part of the Council's Constitution as detailed in Part 4, Rule 7.
- The current Code of Procurement was adopted by Council on 26 July 2012.
- The Code of Procurement requires updating to ensure compliance with the Public Contracts Regulations 2015.
- The 2015 Regulations implement the 2014 EU Public Sector Procurement Directive and a number of new reforms, recommended by Lord Young in his report 'Growing Your Business', to make public procurement more accessible to small businesses.
- Attached is an updated version of the Code of Procurement, highlighting the recommended changes.
- Following consideration by Corporate Governance Committee, the updated Code of Procurement, incorporating any amendments by this committee will be presented to Council on 23 July for adoption into the Council's Constitution..

### 3 Recommendations

- It is recommended that members review and amend where appropriate, the attached updated Code of Procurement and recommend it to Council for adoption.

<b>Wards Affected</b>	All
<b>Forward Plan Reference</b>	
<b>Portfolio Holder(s)</b>	Cllr John Clark, Leader Cllr Chris Seaton, Portfolio Holder, Finance
<b>Report Originator(s)</b>	Rob Bridge, Corporate Director and Chief Finance Officer Mark Saunders, Chief Accountant
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<b>Background Paper(s)</b>	Code of Procurement as adopted in July 2012 Public Contracts Regulations 2015

## Report:

### **1 Introduction**

- 1.1 The Council's Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of the procedures are required by law; others are a matter for the Council to choose. This includes the way the Council procures goods and services, which are presented in Part 4, Rule 7.
- 1.2 In addition to being best practice to review the procurement rules regularly to ensure they remain up to date, there have been significant recent changes in the regulatory framework for procurement following the implementation of the Public Contracts Regulations 2015. These put into English law the changes agreed early in 2014 amending the European Procurement Directives for procurements above the OJEU threshold, together with the UK requirements proposed by Lord Young which affect procurement below the OJEU threshold. Many of the measures in the regulations came into effect from 26 February 2015.
- 1.3 Although the Council's Code of Procurement is being updated to formally comply with the new regulations, all Council procurements since the implementation date of 26 February 2015 have complied with the new regulations.

### **2 Main Changes**

- 2.1 Current EU procurement threshold for goods and services contracts is £172,514 and works contracts £4,322,012.
- 2.2 **Below EU Threshold Requirements**
  - Pre-Qualification or any form of selection (except by using a framework or closed membership consortium) prior to tender is prohibited for contracts valued under £172,514 (goods, services and works). However, contracting authorities may ask questions relating to a potential supplier provided that the questions are relevant to the subject matter of the procurement and proportionate. This will mean the Council may have to evaluate larger number of tenders or quotations for some contracts.
  - From 1st April 2015, all tenders which are advertised in any way and valued at over £25,000 must also be advertised on Contracts Finder (the government's national website). This does not include those tenders which are offered through frameworks (such as the Crown Commercial Services), buying organisations (such as ESPO) or closed membership categories (such as Constructionline). Potentially, this could increase the number of bidders and discourage some local contractors in bidding (see also 2.3 below).
  - From 1st April 2015, similarly details of all contracts awarded must be published on Contracts Finder.
  - All undisputed invoices must be paid within 30 days. The contracting authority must publish annually the proportion of invoices that were paid within 30 days, the total amount of liability for late payments if 30 days is breached and the total amount of interest paid as a result of failure to comply.
  - All contracts must include a requirement of the prime contractor to pay sub-contractors under the same or better terms.
  - Selection criteria must be proportionate and relevant to the subject matter. A turnover cap has been introduced to facilitate SME participation. Contracting authorities will not be able to set company turnover requirements at more than two times contract value except where there is a specific justification.

2.3 Where existing standing orders in local government are in place that have a higher value for advertising tenders, the higher value applies rather than £25,000. This Council's threshold for tendering for goods and services contracts is £25,000 and for works contracts £100,000.

#### 2.4 **Above EU Threshold Requirements**

- All procurement documentation to be available from when the contract notice has been published. The intention is that by publishing a full specification at the outset, bidders will self-select and not bid for inappropriate work. However, this means that more work will have to be carried out by officers in advance of the date of advertising and is likely to lengthen the time taken to undertake the procurement.
- Part B procurements are abolished, i.e. services which were exempt from OJEU under the previous regime are now either subject to a new Light Touch regime (eg. certain social care and health contracts) or subject to the full OJEU procedure (eg. leisure).
- Move to full electronic tendering by 2018.

2.5 The attached Code of Procurement has been amended to incorporate the above changes and these have been highlighted throughout the document. It now also makes reference to the Council's Anti-Fraud and Corruption Policies and the Procure to Pay system (Agresso) which provides a paperless ordering to payment method which can also administer the 30 day supplier payment requirement.

2.6 The Code of Procurement also now makes reference to transparency and publishing of Council procurement data in line with the Local Government Transparency Code 2014. This requires the Council to publish data on all procurements and orders raised over £5,000.

2.7 The new requirements have the potential to increase the administration of procurements above £25,000 through increased officer time spent evaluating larger number of tenders. Consequently, officers will evaluate the impact of the new regulations over the coming months and report back to members with any further changes that may be appropriate, for example the potential to raise the limit for tenders for goods and services to £50,000.



# ***Code of Procurement***

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## 1. Interpretation and scope

1.1 The Code of Procurement defines the regulatory and legal framework for procurement. It has been adopted in accordance with the requirements of Section 135(2) of the Local Government Act 1972 and the Public Procurement Regulations 2015.

1.2 What the Code covers?

This Code applies to the procurement, commissioning, hire, rental, lease or disposal by the Council of:

- (a) land and buildings, roads or other infrastructure;
- (b) vehicles or plant;
- (c) equipment, furniture and fittings;
- (d) construction and engineering works;
- (e) information and communication technology - hardware and software;
- (f) goods, materials, stationery, services and utilities;
- (g) repairs and maintenance; and
- (h) consultants, agency staff, agents and professional services.
- (i) sponsorship via funding, goods or services.

All procurements or sales made by or on behalf of the Council shall comply with this Code, subject to any overriding requirements of:

- the Council's Rules of Procedure and Code of Financial Management; and
- British or European Union law or regulation.

1.3 Fenland District Council as a Local Authority within the meaning of the Local Government Act 1972, is bound to comply with all relevant legislation of England and Wales and European Regulations in performing/undertaking any procurement. In the event any officer intends to procure goods or services they should confirm legal requirements with the procurement team. For the avoidance of doubt, all Tenderers must comply with Fenland District Council's obligations created above in their tender submissions.

### 1.4 Local Trade

The Council recognises the important role it has in shaping the local area, encouraging the local economy and supporting local businesses. In so far as EU Directives, collaborative procurement and value for money allow, the Council will seek to use local traders in its supply of goods, services and works (in accordance with Table 1 at 4.3)



## 1.5 Who the Code covers?

The Council includes all member bodies and person(s) acting in accordance with delegated authority on behalf of the Council. Reference to the “purchaser” shall mean any authorised employee, consultant or agency staff representing the Council in relation to creating a procurement transaction.

Throughout the Code, reference to contractor(s) or sub-contractor(s) shall mean any person, company or supplier(s) who have:

- (b) requested to be on an approved list of tenderers;
- (c) been approached to provide a quotation or tender
- (d) provided a quotation or tender; or
- (e) been awarded a contract in accordance with the provisions of this Code.
- (f) entered a partnering arrangement with the Council for purposes of procurement except where that is with other public bodies/consortium.
- (g) offered to supply sponsorship via funding, goods or services.

## 2. Step 1 - Buying

### 2.1 Delegated authority

In the interest of efficiency, CMT should delegate authority to people who can demonstrate skills and knowledge appropriate to the task. Each senior manager must keep a list of names of people who can make purchases, specifying a maximum financial limit for each transaction that is within those limits set out in table 1 at paragraph 4.3. The list is to be copied to the Corporate Director and Chief Finance Officer to aid financial control.

### 2.2 ICT purchases

In order to safeguard the integrity of the Council’s Information and Communication Technology (ICT) network, purchases of ICT software and hardware that forms part of any of the ICT network should be purchased only following advice from the Corporate Director and Chief Finance Officer or the ICT Manager, and in accordance with the Council’s ICT strategy.

### 2.3 Consultants

Rules surrounding procurement by the consultants/agency staff we employ can be found in section 12 of this document.

### 2.4 Procurement Cards

The Procurement Team have the facility to purchase low value goods and services, up to £25,000, by using a procurement card.

## 2.5 Internet purchasing

Goods can be purchased from the internet, by authorised signatories only, either by the use of an official order, where accepted, or by submitting a request, form PC1, to the Procurement Team to purchase an item(s) using a procurement card. (A copy of form PC1 can be obtained from the Procurement Team)

Discuss your direct internet purchasing requirements with the Procurement Team before placing an order; see paragraph 3.9 to guide internet purchase decisions.

The Council does not permit any personal purchasing from the internet.

## 2.6 Ordering of Goods and Services

All purchases should be made using the Council's Procure to Pay System (Agresso) and all orders should be approved by the relevant officer in accordance with the authorisation levels set by CMT.

## 3. Step 2 - Identifying the procurement route.

### 3.1 Procurement value calculation

In this context, the value of a procurement means the estimated total monetary value over a contract's full duration (N.B. an aggregated value (see paragraph 4.2) and not a single annual value). Where the duration of a procurement is indeterminate, the contract value will be taken to be the estimated value of the contract over a four year period. **On no account should any requirement be split in an attempt to avoid using the proper procedure under this code.**

Every effort should be made to make the best use of our buying power by aggregating purchases whenever possible to benefit from economies of scale.

The purchaser must ensure that adequate budget is available prior to commitment to any contractor. In the event that there are insufficient funds, then procurement cannot proceed until funds are identified in accordance with the Councils Financial Regulations.

### 3.2 Second Hand purchases and purchases from auctions

The Council accepts that there may be circumstances where the purchase of previously used goods, to obtain better value for money or to remain within the allocated budget, is allowable, subject to the following processes and rules.

- There must be documentary assurance that the goods being purchased are fit for purpose.
- Price comparisons must be sought for similar goods, in line with procurement thresholds outlined in table 1 paragraph 4.3.
- Maintenance or replacement options must be covered either by the supplier or by in-house Council expertise.
- The condition of the goods must be assessed by the officer likely to be using the goods, to ensure the goods are fit for purpose.
- Warranties included in the procurement must be used to cover repair, maintenance or return of goods as appropriate.

All other procurement procedures, outlined within this document, must be adhered to.

### 3.3 Before starting the procurement process;-

- Notify the Procurement Team of any Category “B” tenders ( value between £5,000 - £25,000) and Category “C” or “D” tender process, (services or goods with an aggregated value over £25,000). Government Legislation mandates that all procurements over £5000 are to be registered for transparency regulations and all procurements over £25,000 are to be advertised via the Governments Contracts Finder Portal. This will allow the Procurement Team will;
  - ~~to~~ review the procurement against other contracts/purchases made by other services. (To coordinate spend and achieve improved deals through discount for bulk.)
  - update and maintain their ‘Contracts Database’ and transparency register.
  - Advertise requirements via Contracts Finder where required.
- Seek advice from the Procurement Team, on;-
  - Existing corporate contracts
  - Government contracts
  - Buying consortia
  - Existing suppliers on the Council’s ‘Supplier Database’
  - Collaborative opportunities
  - Following correct procedures
  - In-house service providers
  - Local suppliers
  - Social Enterprises

### 3.4 Existing corporate contracts.

- Corporate contracts exist to rationalise the number of suppliers supplying the same service or product, for instance cleaning or catering, and to make efficiency gains surrounding the administration of the quotation and tendering processes. Where the Council has tendered for a service, such as cleaning or

catering, then all similar requirements for that type of service must join an existing corporate contract subject to quality and value for money assessment. (See paragraph 13 for exemptions.)

- All corporate contracts will be regularly reviewed and tendered with the assistance of the Procurement Team.
- A list of corporate contracts can be found on the Procurement Pages on the Council's intranet.

### 3.5 Register of Tenders and Contracts

- All intentions to tender must be notified to the Procurement Team, where it will be logged before any formal documentation, supplier contact or advertisement has commenced in line with the Public Contract Regulations 2015.
- Once a contract has been awarded, whether following a tender process or not, the details of that contract must be notified to the Procurement Team and these details will be recorded on the Council's Contracts Database and Transparency Register.

### 3.6 Government buying contracts and other buying consortia

- Organisations such as Eastern Shires Purchasing Organisation (ESPO(Pro5)) and Crown Commercial Services (CCS)~~the Government Procurement Service (GPS)~~, have a vast range of pretended contracts for goods and services available to Local Government.
- These contracts, regardless of value, including EU threshold regulations, prevent the need for formal processes for quotations and tenders. This improves administrative efficiency and reduces the time needed to acquire either goods or services. (Note: These contracts must match the Council's requirement exactly.)
- If there is more than one pretended supplier that can supply the goods or services required, then it is advisable to operate a 'mini competition' which involves obtaining a price/quotation from all suppliers capable of supplying the requirements. The Procurement Team can offer advice and guidance in this area.

### 3.7 Advertising on Contracts Finder ~~the Council's~~ and Source Cambridgeshire's web site

- All invitations to tender must be advertised on Contracts Finder ~~the procurement pages of the Council's web site~~ and the Source Cambridgeshire web-site, coinciding with the timings surrounding the tender process.

### 3.8 Internet purchasing

- Internet purchasing can be made via the following routes and methods in conjunction with an Agresso Order;-
  - Via the Printroom for stationery and ICT consumables from Banner, ESPO and CCSGPS.
  - Via the Purchasing Manager for any Banner, ESPO or CCSGPS purchases.
  - From any web supplier, direct via authorised signatories only, who will accept an official FDC order, .
  - From any web supplier via the Procurement Team who have access to credit facilities by use of Government Procurement Cards..

The Council does not permit any personal purchasing from the internet.

### 3.9 Use of internet auction sites

Unless specifically part of a Local Government tender process, use of internet auction sites for both purchase and disposal is prohibited, e.g. e-Bay.

### 3.10 Award Criteria

Tender documentation must state how submitted tenders will be evaluated and what weighting/multiplier, if any, will be applied to the calculation. Advice from the Procurement Team should be sought prior to the start of the procurement process.

### 3.11 Breaching of the Code of Procurement

**The Code of Procurement is part of the Council's Constitution. A breach of this Code may lead to disciplinary action.**

A breach is defined as any non-compliance or failure to evidence compliance with any part of this Code.

### 3.12 Checking all tenders

The Procurement Team are to be given all tender documentation one week prior to sending out.

- To review document
- Ensure standardisation
- Scrutinise the process

### 3.13 Electronic procurement

Where this option is available or offered as part of a collaborative procurement, seek advice from the Procurement Team before commencing the procurement process.

Quotes for category “A” and category “B” procurements can be requested and received via e-mail.

Tenders for Category “C” and category “D” procurements can be distributed via either the postal system or e-mail. Tender responses can be received via the post or e-mail in the method described in paragraph 5.2(a) and 5.2(b). However, if e-mail is chosen, seek procedural advice from the Procurement Team.

## 4. **Step 3 – Identifying Suppliers.**

### 4.1 Retaining documentation

The purchaser should record and retain quotations and tenders obtained to provide evidence of competition, fairness, value to the Council and the basis of decisions made for a period.

Document retention guidelines will be supplied by the Procurement Team, including statutory requirements as appropriate.

### 4.2 Aggregation Rules

Any contract value or estimated contract value must be an accumulation of the ‘whole life’ costs of the contract, i.e. any cost associated with the procurement must be included to determine which procurement category should be used.

(Note: for aggregation purposes and where there is no specific contract length, purchasers should assume a contract length of at least 4 years for the purpose of this calculation.)

Having determined the proposed contract total value purchasers shall then follow one of the procedures, outlined in paragraph 4.3 table 1, which shall be used in all procurements or disposals.

4.3 Table 1 – procurement classification

Category	Estimated total value of procurement		Requirement	Exemptions
	Supplies & Services	Works		
A	Up to £5,000	Up to £10,000	An official order pertaining to at least one estimate shall be completed. An estimate from a local supplier should be included if possible. It is good practice to obtain more than one estimate/quotation.	Not applicable.
B	Between £5,000 and £25,000	Between £10,000 and £100,000	Obtain at least three competitive quotations. At least one quotation to be obtained from a local supplier if possible.	Unless exceptions apply as per section 13.
C	Between £25,001 and £172,514	Between £100,001 and £4,322,012	Competitive tenders shall be obtained using one of the tendering options in this code and a formal written contract prepared. At least one tender sought from local suppliers where practical. <i>(Where externally compiled lists are to be used, e.g. Constructionline, then where possible a minimum of six suppliers should be sought for tendering.)</i>	Unless exceptions apply as per section 13.
D	Over £172,514 (Applicable from 01/01/14).	Over £4,322,012 (Applicable from 01/01/14).	The appropriate EC procurement directive shall be complied with.	See 3.6 & 4.8, pre-tendered Government contracts. <del>Where the procurement falls outside EU regulations, e.g. river traffic</del>

Note 1: see Appendix 1 for what constitutes 'works' and Appendix 2 for categories of services

#### 4.4 Category A Procurement

- For transactions valued up to £5,000, (£10,000 for works), competitive quotations are not required under this code, though it is always good practice to seek more than one quote if other suppliers are available.

#### 4.5 Category B Procurement

- For transactions valued between £5,000, and £25,000, (for works over £10,000, but at or below £100,000), at least three written quotations must be invited, specifying the supplies, services or works and setting out prices, terms and conditions of contract and terms of payment before a formal purchase order is issued.
- Faxed quotations, e-mailed quotations or catalogue prices are acceptable in these cases (as detailed in 4.8).
- If the Council is not bound to accept the lowest quote then this must be outlined in correspondence to those suppliers intending to submit quotes.

#### 4.6 Category C Procurement

- For transactions valued at over £25,000, (£100,000 for works) a formal tender procedure must be conducted in the manner outlined below.
- ~~One of three tender procedures;~~
  - Open
  - ~~Restricted~~
  - or Negotiated should be selected as the most appropriate for the transaction.

~~These are designed to be essentially the same as the procedures described in EC Directives in order to provide consistency.~~

##### 4.6.1 Open Procedure

Open procedure is where anyone can submit a tender and it requires the following process:

- a) An advertisement must be placed on Contracts Finder~~the Council's web site, the and~~ Source Cambridgeshire web site. No pre-qualifying questionnaires are allowed and tenders should be sent to all companies who express their interest in the tender exercise and/or in the local and national press and/or trade journals in order to target the appropriate market. Unless there are a specific number of providers that can all be approached without advertising, in which case all should be invited to tender. Sole use of local advertising, including the Council's web site, may be made where it provides sufficient competition and does



~~not exclude potential national suppliers. This will be determined jointly by the Procurement Team and relevant Service Manager.~~

- b) The advertisement should specify a time limit (minimum 10 working days) within which interested parties must express their interest in tendering. After the expiry of this period, invitations to tender should be sent to all the interested parties, specifying a period of not less than 15 working days for the return of tenders.

~~c) If a large number of tenders are likely to be received to the extent where it is very time-consuming to evaluate each in detail, it may be appropriate to ask for submissions in two parts. For example, by making use of a pre-tender qualification questionnaire to identify a manageable number of potential suppliers to subsequently be invited to tender.~~

#### 4.6.2 — Restricted Procedure

~~Restricted procedure tendering is where the intention should be that a minimum of three tenderers are selected from those who express an interest and is identical to that for open tendering, except that:~~

- ~~a) the advertisement should state that a restricted tendering procedure will be used.~~
- ~~b) the advertisement should specify the information to be provided by interested parties for the short-listing process (this may be by their completion and return of a pre-qualification document).~~
- ~~e)a) on the date specified in the advertisement, invitations to tender should be sent to no less than three tenderers selected by means of pre-determined objective tenderer selection criteria (or all of them where less than three entrants meet the criteria). The invitation to tender should specify a period of not less than three weeks for the return of tenders.~~

#### 4.6.3 Negotiated Procedure

Negotiated procedure is identical to that for the open procedure~~Restricted Procedure~~, except that post-tender negotiation is permitted, Advice should be sought from the Procurement Team prior to the start of the procurement process.

#### 4.7 Category D Procurement

For transactions valued at over £172,514 (£4,322,012 for works ) an EC procurement directive must be complied with. Under EC Directives, the contract may be tendered under the Open, Restricted or, in exceptional circumstances, the Negotiated procedure. These are essentially the same as the procedures for category C transactions but with additional formalities. The EC Directives are very detailed and consequently, advice should be sought from the

Procurement Team prior to the start of the procurement process. For each contract, usually, a Contract Notice must be published in the Supplement to the Official Journal of the European Union (OJEU).

#### 4.8 Government Catalogues

In its determination to improve the efficiency and economy of Public Authority procurement, Central Government has developed an executive unit of its own, ~~the Crown Commercial Services (CCS)~~ Government Procurement Service (GPS). This unit has links to a number of catalogues for a variety of supplies and services from suppliers that have been competitively evaluated and quality assessed. FDC can access these catalogues in order to identify suppliers for its own needs, subject to requirements of this Code as follows. (This also includes the Eastern Shires Purchasing Organisation (ESPO) and its merger with other purchasing organisations, named Pro5.)

Use of these catalogues enables procurement to take place without tendering even where EC thresholds are exceeded, because suppliers listed have already tendered in order to get on the list. However, all suppliers listed within the same framework/catalogue, and able to provide the required product, must be approached and offered an opportunity to show interest or, provide a quotation or tender.

#### 4.9 Selection Criteria

- (a) Sufficient vetting shall be undertaken to ensure that all contractors:-
- comply with minimum standards of insurance;
  - have the necessary Health & Safety policy and performance and (where applicable) membership of the Contractor's Health and Safety Scheme or equivalent health and safety standard;
  - are financially viable based on a risk based assessment;
  - have an appropriate environmental policy;
  - comply with equalities legislation and policy; and
  - possess the experience and capacity required.
- (b) The Procurement Manager shall provide an appropriate questionnaire for the purpose of vetting contractors.

### 5. Step 4 – Receiving and opening tenders

#### 5.1 Category “B” transactions

For category “B” transactions the principles of this code shall be applied in that fair and ethical procedures shall ensure that the most economically advantageous arrangement is obtained for the Council and that no potential contractor is treated any less fairly than another.

## 5.2 Category “C” or “D” transactions

Where tenders or quotations for category “C” or “D” transactions are invited, in accordance with this Code, no tender or quotation will be considered unless:

- (a) contained in a plain envelope which shall be securely sealed and shall bear the word “Tender” or “Quotation” followed by the subject to which it relates. Contractors shall be notified accordingly. The envelope shall not bear any distinguishing matter or mark intended to indicate the identity of the sender. Such envelopes shall be addressed impersonally to the Procurement Manager; or
- (b) it has been sent electronically to a specific e-mail address, an e-vault, which the Procurement Manager has sole access to once the tender expiry date has been reached.

## 5.3 Opening tenders

All envelopes or e-mails received shall be kept securely and shall not be opened or accessed until the time appointed for their opening. All tenders or quotations invited in accordance with this Code shall be opened at one time only and by at least two officers, one of whom must be an officer from the Procurement Team.

All tenders or quotations upon opening shall be recorded in writing on either a tender or quotation opening record, as is appropriate. The Form of Tender or Quotation and any accompanying documentation shall be marked with the date of opening, and signed by at least two officers present at the opening. The tender or quotation opening record shall also be signed by at least two officers present at the opening. The Procurement Manager shall retain the original opening record.

## 5.4 Late quotes and tenders

Generally, any tenders or quotations received after the specified time shall be returned promptly to the contractor by the Procurement Manager. However, if it can be evidenced that no other tenders have been opened prior to receipt of the late tender or that no other tenders have been received then a late tender may be accepted at the discretion of the Procurement Manager. In the event that a tender has to be returned unaccepted then the tender or quotation may only be opened to ascertain the name of the contractor but no details of the tender or quotation shall be disclosed.

## **6. Step 5 – Evaluation of tenders and quotations.**

### **6.1 Single tenders**

For transactions in category “B” or “C” single tenders may only be accepted after a waiver has been obtained for this purpose under the procedure set out in section 17 of this Code.

### **6.2 Category “A” or “B” procurements**

Where written quotations are invited for transactions in category “A” or “B” then the bidder submitting the lowest price bid should be awarded any resulting contract, unless alternative pre-determined criteria are used. In which case the tender providing the most economically advantageous arrangement to the Council according to the pre-determined criteria shall be selected.

### **6.3 Category “C” or “D” procurements**

For transaction in category “C” or “D”, a more complex Best Value tender evaluation procedure based on the identification of the Most Economically Advantageous Tender (“MEAT”) should be used in preference to a price-only evaluation where appropriate.

This evaluation involves scoring tenders objectively, by a panel selected from officers and/or independent experts. The panel must be chosen by the appropriate member of CMT, using criteria that should:

- (a) be pre-determined and listed in the invitation to tender documentation
- (b) be strictly observed at all times throughout the tender process
- (c) reflect the principles of Best Value
- (d) include price
- (e) consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account
- (f) measure achievement of technical requirements where appropriate
- (g) be capable of objective assessment
- (h) be weighted according to their respective importance

- (i) include, where applicable, the quality of the tenderers' proposals to transfer staff under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 1981
- (j) avoid discrimination or perceived discrimination on the basis of nationality, or other discrimination contrary to the Council's Equality Policy.

Where this evaluation methodology is used, any resulting contract must be awarded to the tenderer who submits the most economically advantageous tender, i.e., the tender that achieves the highest score in the objective assessment.

#### 6.4 Negotiated Procedure

Where a Negotiated Procedure has been used and post-tender negotiation has been entered into, all tenderers should be invited to submit their best and final offers at the conclusion of negotiations under the same procedure as for the receipt and opening of tenders above. In this case, the best and final offers should be evaluated by revisiting the objective scoring process and revising scores as appropriate.

#### 6.5 Criteria for works contracts

Further criteria for works contracts must be applied, regardless of value, and a contractor must be selected who:-

- i) can confirm a business contact address and telephone number
- ii) has an acceptable level of public liability insurance.
- iii) is registered for tax and holds a valid certificate (where appropriate).
- iv) is capable of undertaking the work safely and competently and is a member of a recognised trade association, e.g., NICEIC or ECA for electrical installation works or Gas Safe for gas installation works.

#### 6.6 Criteria for service contracts

A further criteria for service contracts must be applied, regardless of value, and a contractor must be selected who has appropriate indemnity insurance.

### 7. **Arithmetical Errors**

- 7.1. Contractors can alter their tenders or quotations after the date specified for their receipt but before the acceptance of the tender or quotation, where examination of the tender or quotation documents reveals arithmetical errors or discrepancies which affect the tender or quotation figure. The contractor shall be given details of all such errors or discrepancies and afforded an opportunity of confirming,

amending or withdrawing this offer in writing.

## 8. Step 6 – Awarding contracts

### 8.1 Recording results

The results of the tender evaluation process should be recorded and retained by the Procurement Manager in accordance with paragraph 4.1 of this Code.

### 8.2 Contract authorisation/signing

Contracts must only be signed by a member of CMT or officers authorised to do so by a member of CMT. In nominating authorised officers, consideration shall be given to length, value and complexity of contract. All contract awards over £25,000 need to be published on Contracts Finder in line with Public Procurement Regulations 2015.

### 8.3 Formal contract for category “C” or “D”

A formal contract must be agreed for any procurement of supplies, services and works falling in to category “C” or “D”.

### 8.4 Awarding EU contracts

All contracts awarded under EU Directives, should be formally notified to the Corporate Director and Chief Finance Officer.

All contracts awarded under EU Directives must observe a ten day ‘cooling off’ period after the award decision. Ten working days to start once all tender participants have been notified in writing of the decision.

## 9. Use of closed membership categoriesselect lists

### 9.1 Externally compiled lists.

Only those lists containing details of contractors that are compiled and maintained by an external organisation in a manner approved by the Corporate Director and Chief Finance Officer or Procurement Manager shall be adopted as approved lists of tenderers, e.g. Constructionline. Any approved list of tenderers shall be reviewed periodically and at least prior to the third anniversary of its initial or further adoption and must be again approved by the Corporate Director and Chief Finance Officer or Procurement Manager. Adoption of such lists must be notified to the Corporate Director and Chief Finance Officer or Procurement Manager to be registered as a source for procurement.

For each use of the list, where the transaction falls into category “C”, invitations to tender for a contract should be sent to no less than six

entrants by means of the application of pre-determined and objective tenderer selection criteria.

- In using a list, where tenders are for similar goods, services or works, i.e. have been tendered for previously within the last 9 months, then, to show fair competition, the new tender can include the best two returns from the previous tender and must include two new tenderers to replace the two lowest placed tenderers from the previous tender. The two remaining tender places can be taken by either local suppliers or tenderers from a previous tender. However, where possible, at least one of the six tenderers should be a local supplier.

Where the total is expected to fall into category “D”, tenders may be invited using the standing list but each requirement must also be advertised under the EU Directives.

## **10. Framework Agreements**

### 10.1 What is a framework agreement?

Where the Council wishes to establish a supply relationship with a number of companies who provide similar goods or services it can create a framework agreement.

A framework agreement is where a limited number of companies can supply a specific service to the whole Council, and this will usually be created for corporate use by the Procurement Team. All purchases for this service will be acquired via the framework agreement, which will be reviewed every three years.

### 10.2 Using agreements

Once the Council has created a framework agreement all services requiring such a service must use the framework agreement.

External framework agreements, i.e. through the County Council or other Cambridgeshire Councils, must be used where appropriate, e.g. temporary staff and printing framework agreements.

## **11. Contracts**

### 11.1 Cambridgeshire Procurement Group and collaborative/shared contracts

Collaboration exists between Cambridgeshire councils and to ensure Fenland’s contracts are available to other Cambridgeshire councils the following statement must be included in all tender and contract documentation for category C and D procurements.

*“It is possible that the contract may be extended to encompass the requirements of one or more of Cambridgeshire's five District Councils, Peterborough City Council and/or Cambridgeshire County Council at some point during the lifetime of the contract. It will be the responsibility of the appropriate Council to make this decision.*

*The District Councils are as follows:*

- *Cambridge City Council;*
- *East Cambridgeshire District Council;*
- *Fenland District Council;*
- *Huntingdonshire District Council;*
- *South Cambridgeshire District Council*

*The terms and conditions of this contract, as awarded, will apply to any of the named councils above should they so wish to utilise the procurement of goods, services or works within this contract.*

Any contracts entered into through collaboration with other Local Authorities or other public bodies, where a competitive process has been followed that complies with the Contract Regulations/Code of Procurement of the leading organisation (but does not necessarily comply with Fenland's Code of Procurement), will be deemed to comply with our Code of Procurement but will require an exemption as per paragraph 13.3 of this Code . However, advice must be sought from the Procurement Team in the first instance.

In general, to use this type of contract the FDC specification, including terms and conditions, and price (budget availability), must be matched.

## 11.2 Contract extensions

Only contracts containing 'contract extension' clauses can be extended, unless paragraph 14.1 applies.

In all circumstances a contract extension must be approved in writing by the appropriate member of CMT (Complete form CE1 obtained from the Procurement Team).

## 11.3 Contracts Register/Contracts Database

All managers shall ensure that all category “B”, “C” and “D” procurements are notified to the Procurement Team so that they can be added to the Council's 'Contracts Database': [And Transparency Register](#)

## 11.4 Letters of intent

Letters of intent provide a contractor with the authority to proceed prior to the award of a contract. Use of this type of process is



considered a 'high risk' and consequently can only be used under exceptional circumstances.

Letters of intent must be in a form approved by the Council's Legal Team ~~Chief Solicitor~~ and must be signed by the member of CMT responsible for the relevant service.

This directive applies to both new contracts and contract extensions.

## 12. Consultants

### 12.1 Procurement and purchasing authorisation

Only permanent employees of Fenland District Council can have any procurement and purchasing authorisation.

- Therefore, consultants, agents, contractors, professional advisors and agency staff, have no authority to;-
  - Authorise Official Orders.
  - Make any verbal or written commitment on behalf of the Council.
  - Authorise invoices for payment
  - ~~Initial 'goods received' or 'prices & calcs chk'd' on expenditure allocation and certification slips.~~
- Exemptions to the above can be approved by the Corporate Director and Chief Finance Officer , but in so doing must form part of the terms and conditions of their contract/relationship/employment by Fenland DC.
  - It shall be a condition of the engagement of any consultants, agents, contractors, professional advisors and agency staff who are to be responsible to the Council for the award or supervision of a contract on its behalf, that in relation to that contract they shall:
    - comply with this Code as though they were an employee of the Council;
    - at any time during the carrying out of the contract produce to CMT, on request, all the records maintained by them in relation to the contract; and
    - on completion of the contract transmit all records that they have produced or received that relate to the contract to the appropriate member of CMT.
- ~~Regardless of any exemption, at least two permanent Fenland DC employee signatures must appear on payment slip administration.~~

## 13. Exemptions

### 13.1 EU exemptions

See paragraph 3.6 for possible procedural exemptions.

~~If a product or service is defined as EU exempt, e.g. river traffic, refer to non-EU tendering procedures.~~

### 13.2 Category “B” or “C” exemptions

Purchasers may apply an exemption from steps 3 and 5 for category “B” or “C” when:

- a) work to be executed or goods, services or materials to be supplied consist of repairs to or the supply of parts of existing proprietary machinery, equipment, hardware or plant and the repairs or the supply of parts cannot be carried out practicably by alternative contractors.
- b) specialist suppliers, consultants, agents or professional advisers are required and:
  - there is no satisfactory alternative; or
  - evidence indicates that there is likely to be no genuine competition; or
  - circumstances are such that a specialist needs to be assigned with urgency to mitigate against a legal and/or financial claim and delay would worsen the claim.
- c) the work is of a short-term nature to enable services to continue; short term is defined as a maximum of 3 months.
- d) the work is of a one-off emergency nature to prevent danger or harm to any person.
- e) a tendering exercise has been performed in accordance with this Code and only one tender has replied and has met the Council’s specified requirements in accordance with Step 3 of this Code..
- f) it is in the best interest of the Council to employ consultants or suppliers already contracted or previously contracted, within the last 12 months, following valid tendering procedures from other Council’s or partners, to be employed for further work associated with, but not critical to an existing project.
- g) a decision is taken by the Corporate Director and Chief Finance Officer, which is **formally** supported by the relevant Portfolio Holder Cabinet, to suspend formal tendering

procedures. All reasoning surrounding this decision must be clearly minuted and copied to the Procurement Manager.

- h) Where a contract is to be entered into through collaboration with other Local Authorities or other public bodies and where a competitive process has been followed that complies with the Contract Regulations/Code of Procurement of the leading organisation but does not necessarily comply with Fenland's Code of Procurement. Appropriate checks will be carried out by the Procurement Team to ensure this Council's interests are safeguarded.

### 13.3 Valid reasons to bypass quote or tender procedures

Nothing in this Code shall require tenders or quotations to be sought:

- for purchases through any local authority or government consortium, collaboration or similar body, where the procurement rules of that organisation have been adopted. Rules of another organisation can only be adopted with the approval, of the Corporate Director and Chief Finance Officer. (Exception see paragraph 11.1.); or
- for purchases through any Framework Agreement (See paragraph 11) where this Code of Procurement has been adopted. The Corporate Director and Chief Finance Officer or Procurement Manager shall approve and keep under review the continued suitability of any such Framework Agreements.
- for purchases made at public auction;

### 13.4 Applying exemptions

**To exercise any of the above exemptions** the purchaser shall compile and retain a record:

- reasoning the decision; and
- evidencing approval by the relevant member of CMT and the Corporate Director and Chief Finance Officer (or a nominated authorised signatory from within the Finance Service for procurements under EU threshold limits); and
- evidencing any action taken to ensure that the most economically advantageous arrangement has been obtained from the negotiations with the tenderer.

### 13.5 Corporate contracts

Exemptions from the use of corporate contracts must be obtained in writing from the appropriate member of CMT along with documented

valid reasoning. Documentary copies to be forwarded to the Procurement Team.

### 13.6 Advice on exemptions

In the first instance, advice and decisions on applying exemptions will come from the Procurement Team. Should there be a requirement for further advice and a decision then the following hierarchy will be used;-

- Chief Accountant
- Corporate Director and Chief Finance Officer
- CMT
- Cabinet

## 14. Extensions

14.1 An existing contract may be extended once using the exemption in paragraph 13.2 (f) of this Code if all of the following apply:

- (a) If budgetary provision is available
- (b) If the terms and conditions will be unchanged
- (c) If continuing with the existing contract can be shown to provide better value for money than re-tendering on the basis of identifying possible suppliers (subject to 14.1(d))
- (d) If extending the contract does not take its whole value beyond the EC thresholds and does not increase the term value by more than 12 months 50% of the original contract value.

14.2 In all circumstances a contract extension must be approved in writing by the appropriate member of CMT.

## 15. Disposals

15.1 The same competitive process for buying supplies, services and works must also be applied to the disposal of surplus or obsolete goods, though separate procedures apply to the sale of land and/or property.

In principle:

- (a) competitive bids must be invited for all goods falling into category "A", except where the item is unlikely to attract any interest, in which case written approval must be sought from the Procurement Manager before disposal.
- (b) if the estimated value of the goods falls into category "B" then a minimum of three bids must be invited.

- (c) if the estimated value of the goods falls into category “C” or “D” then a professional valuation should be obtained, a minimum of 3 sealed bids must be invited and opened in accordance with the procedure in section 5/step 4 of this code.

15.2 In case of doubt, professional advice should be sought when making valuations. For higher value items, sale by auction should be considered as an alternative to sealed bids, but care should be taken to evaluate the full cost of the process.

15.3 In all cases, the highest bid received must be accepted, unless it can be demonstrated that an alternative bid is more economically advantageous overall to the Council in which case the reasoning for the decision should be recorded and prior approval sought from the Corporate Director and Chief Finance Officer or Procurement Manager.

15.4 Public Auction can be used for items of any value where deemed most likely to achieve greatest interest in the goods for disposal. In the case of auction then a reserve value should be agreed with the Corporate Director and Chief Finance officer or Procurement Manager prior to sale commencement or in accordance with a valuation process approved by the Corporate Director and Chief Finance Officer or Procurement Manager.

15.5 Disposal by auction can be made either by a professional auction house or an internally managed formal auction process.

- The Council’s intranet can be used for the internal auction process

## 16 Prompt Payment Code

16.1 The Public Procurement Regulations 2015 require the Council to pay suppliers promptly ~~has adopted the Central Government Policy of the Prompt Payment Code~~. This means that in dealing with suppliers it will:-

- Pay suppliers through the Council’s Procure to Pay system (Agresso), on time within the terms agreed at the outset of the contract (usually 30 days) without attempting to change payment terms retrospectively without changing practice on length of payment for smaller companies on unreasonable grounds.
- Provide suppliers with clear and easily accessible guidance on payment procedures ensuring there is a system for dealing with complaints and disputes which is communicated to suppliers advising them promptly if there is any reason why an invoice is in dispute.
- Ensure that a maximum 30 day payment term is written into all contracts and that contractors pass this through the entire supply chain.

16.2 Before committing to suppliers wishing to operate different payment terms to the usual 30 days, the Chief Finance Officer should be notified of the alternative requirement to ensure that the terms can be met.

## 17. Terms and conditions

17.1 All orders placed by the Council shall be on the Council's Terms and Conditions or industry standard terms and conditions used by the Council, including compliance with the requirements of the Prompt Payment Code, see paragraph 16 above.

17.2 Where a contractor formally insists on trading on Terms and Conditions other than those of the Council, these must be approved, prior to an order being placed, by the Chief Solicitor, except for:-

- Any framework agreement adopted by the Council.
- Any Government Catalogue or ESPO (Pro5) contract.
- Orders for less than £5,000, where goods or services are purchased on a retail basis on terms available to the general public.
- Orders for software where the licence is for a 'standard' product, but not where customisation, development or on-site service is required for a 'standard' product.

17.3 All contracts for category "C" or "D" procurements must have a contract, bearing the relevant Terms and Conditions agreed by the relevant member of CMT Director of Central Services, signed by both parties.

17.4 Performance bonds

Where a contract (other than for the performance of legal or consultancy services) is estimated to exceed EU Thresholds and is for the execution of the works by a particular date or series of dates or in cases where the relevant member of CMT so decides, the contractor shall supply a performance bond in the sum of 10% of the contract sum or such lower amount as the Corporate Director and Chief Finance Officer shall certify as the maximum loss which could be suffered by the Council. The surety shall be a substantial bank or insurance company approved for that purpose by the relevant member of CMT and approved by the Corporate Director and Chief Finance Officer.

Exceptionally, a parent company guarantee may be given in lieu of the provision of a performance bond if the relevant member of CMT and the Corporate Director and Chief Finance Officer agree.

17.5 All procurement processes should have regard to the Council's Anti-Fraud and Corruption Policies.