

HUNTINGDONSHIRE DISTRICT COUNCIL

Title:	Code of Procurement
Meeting/Date:	Corporate Governance Committee – 22 March 2017 Council – 29 March 2017
Executive Portfolio:	Executive Member for Strategic Resources: Councillor J A Gray
Report by:	Procurement Manager
Ward(s) affected:	All Wards

Executive Summary:

The Code of Procurement is reviewed on an annual basis to ensure that they reflect current legislation and the changing needs of the Council. This policy underpins governance of procurement in the Council and is an annex to the Council's constitution.

There are 4 proposed significant changes:

- (a) A clarification of the rules for disposal of surplus items worth less than £1,000 to charity or by sealed bid to ensure efficient process.
- (b) Harmonisation of tender thresholds to £100k to align with our partner authorities. Our current threshold is £75k. The changes should have little effect on the level of competition as both above and below this threshold is advertised nationally.
- (c) There have been instances where low value requests (some less than £10k) for approval have been sent to the Monitoring Officer. The proposal is that Heads of Service can approve single quotes, where justified, and subject to reporting to Corporate Governance Committee quarterly.
- (d) The Finance Bill 2017 revises the Intermediaries Legislation and introduces a duty on Public Bodies to collect income tax and national insurance through Pay-As-You-Earn if the working arrangements of a consultant, interim or contractor becomes like that of an employee. Heads of Service would become responsible for assessing the tax status at the point of engagement. Failure to correctly assess could result in the Council becoming liable for any back taxes owed.

Recommendation:

The Committee is requested to peruse the report and recommend the proposed changes to the Code of Procurement (**Appendix 2**) for approval by Council.

1. PURPOSE OF THE REPORT

- 1.1 The Code of Procurement is reviewed on an annual basis to ensure that it reflects current legislation and the changing needs of the Council. These policies underpin the financial governance of the Council and are incorporated in the constitution.

2. WHY IS THIS REPORT NECESSARY/BACKGROUND

- 2.1 The Code of Procurement provides the framework for compliance with current legislation as well as the basis for best practice. Procurement documentation and training will be revised to comply with the changes detailed at paragraph 3 below.

3. OPTIONS CONSIDERED/ANALYSIS

- 3.1 There are four significant changes to this Code, which are summarised below. A detailed explanation is provided at Appendix 1:
- (a) A clarification of the rules for disposal of surplus items worth less than £1,000 to charity or by sealed bid to ensure efficient process.
 - (b) As part of work to align procurement rules and simplify joint procurements with our partner authorities, consideration was given to procurement thresholds. Whilst 3 thresholds result from statute (direct award <£5k, 3 quotes £5k - £25k, and EU threshold £164k), the tender threshold varied amongst the authorities. The proposal is to standardise on £100k, an increase from our current threshold of £75k. The changes should simplify some procurements but would have little effect on the level of competition as both Formal Quotes and Tenders are advertised nationally.
 - (c) There have been instances where low value requests (some less than £10k) for approval have been sent to the Monitoring Officer. The proposal is that Heads of Service can approve single quotes where justified and subject to reporting to Corporate Governance Committee quarterly.
 - (d) The Finance Bill 2017 introduced revisions to the Intermediaries Legislation that affects the engagement of consultants, interims and contractors. Depending on the working arrangements, the Council or Agency (if engaged through an Agency) may become responsible for collecting income tax and national insurance through Pay-As-You-Earn. The amendment ensures that Heads of Service are responsible for assessing the tax status at the point of engagement. Failure to correctly assess could result in the Council becoming liable for any back taxes owed.

4. KEY IMPACTS / RISKS

- 4.1 Failure to incorporate measures to accommodate the Finance Bill 2017 increases the risk of non-compliance with tax regulations leading to demands for back tax and penalties, as well as potential reputational damage.

5. WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION

- 5.1 Upon approval, the Code will be a requirement for all procurement operations.

6. LINK TO THE CORPORATE PLAN, STRATEGIC PRIORITIES AND / OR CORPORATE OBJECTIVES

6.1 The Code of Procurement comes under the “Becoming a More Efficient and Effective Council” aspect of the Corporate Plan, and enabling the Council to “Become more efficient in the way we deliver services and providing value for money services”.

7. LEGAL IMPLICATIONS

7.1 The Code of Procurement has been updated to reflect current legislation and regulations, aiding the Council’s compliance.

8. RESOURCE IMPLICATIONS

8.1 There are no direct cost implications arising from this report, however, the Code promotes best practice best value in the management of the Council’s resources.

9. OTHER IMPLICATIONS

9.1 There are no known other implications.

10. REASONS FOR THE RECOMMENDED DECISIONS

10.1 The Code of Procurement supports the internal governance framework of the Council, it also forms part of the Council’s constitution. This annual review seeks to ensure that it continues to be relevant and up-to-date, reflecting any new statutory regulations of changes in local management and practice.

11. LIST OF APPENDICES INCLUDED

Appendix 1 - Proposed changes to the Code of Procurement
Appendix 2 - Draft amended Code of Procurement

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PROPOSED AMENDMENTS TO THE CODE OF PROCUREMENT

1. This briefing note provides an explanation of the proposed changes to the Code of Procurement.

Disposal of Low Value Redundant Equipment

2. Although disposal of low value (< £1000) surplus items by donation to charity or sealed bids from staff has been used in the past, the Code is silent on the subject. The amendment is to formalise these options with the intent of saving staff time where the intrinsic value is very low and the prospect of any worthwhile return to the Council is remote.

Harmonisation of Thresholds

3. As part of the development of common procurement procedures and practice across the three partner authorities, a working group has examined procedural thresholds. The working group identified 3 thresholds that were controlled or influenced by current regulations and a fourth set by individual Authorities' Codes/Standing Orders.
4. The Tender threshold varied amongst the authorities but a common level of £100k was considered appropriate, which also matched County Council's tender threshold. In practical terms, as both Formal Quotes and Tenders are advertised on the same national portal (Contracts Finder) the level of completion should be comparable, albeit that Formal Quotes are a simpler, quicker process.
5. The table below details the proposed thresholds:

	Current Value	Controlling Statute/Regulation	Process	Proposed Values
1	£5k	Local Government Transparency Code 2013	3 Quotes	£5k
2	£25k	Public Contract Regulations 2015	National advert & formal quotes	£25k
3	£75k	Code of Procurement	National advert & tenders	£100k
4	£164k	EU Procurement Directive	Applicable EU procedure	£164k

Approval of Single Quotes

5. Current rules give Heads of Service very limited grounds for approving single quotes which has resulted in a number of small value (£5k - £10k) single quote requests going to the Monitoring Officer for approval. The proposed change permits Heads of Service to approve up to £25k where justified and subject to formal reporting to the Corporate Governance Committee.

Intermediaries Legislation

6. The Finance Bill 2017 introduced revisions to the Intermediaries Legislation that affects the engagement of consultants, interims and contractors. Depending on the contractual arrangements, the nature of work to be undertaken and duration of the engagement the consultants, interim or contractors may be deemed an employee for tax purposes. The Council or Agency (if engaged through an Agency) becomes responsible for collecting income tax and national insurance through Pay-As-You-Earn. The amendment to the Code ensures that HOS are responsible for assessing the tax status at the point of engagement. HMRC have provided a simple online tool to check employment status and guidance has been issued to all Managers. Failure to correctly assess could result in the Council becoming liable for any back taxes owed.

Minor Changes

7. The table below details the additional minor changes made to the Code.

Para.	Section	Summary of Change
1.3	Introduction	Replaces “Manager” with “Officer” to reflect the staff undertaking procurement work.
1.5	Introduction	Broader definition to now include “3Cs partners” providing goods and services to the Council.
1.6	Introduction	Revised paragraph to include low value (<£1k) disposals to charity and the mechanism for disposal to Officers.
1.8	Introduction	Addition of “Crown Commercial Services Procurement Policy Notices” which have statutory effect following the Small Business, Enterprise and Employment Act 2015.
5.3 (c)	Contracts Register	Amendments of the procedure to reflect the requirement for advertisement/competition for requirements over £25,000.
6.4 (e)	Head of Service Approval	Provide authority for the Head of Service to approve single quotes provided they are justified to the Corporate Governance Committee.
6.5 (b)	Monitoring Officer Approval	Subparagraph deleted as the approval of proprietary goods and materials already provided in subparagraph 6.4 (b).
6.5 (e)	Monitoring Officer Approval	Subparagraph deleted as serial programmes no longer used.
11 (b)	Opening of Tenders	Introduces our e-Tendering tool as an authorised means of receiving tenders and quotes.