

Report to: Executive
Date: 4 April 2006
Report of: Joint Report of the Corporate Procurement Manager and Monitoring Officer
Subject: Procurement Code of Practice
Ward: All

1. Purpose of Report

- 1.1. This report has been prepared to seek Members approval of the Code of Practice for Procurement, to a review of the Council's Constitution and associated Standing Orders to bring them into line with current procurement best practice and to agree on the next steps in rolling the Code of Practice out for use by Members and Staff within the organisation.

2. Consultation

- 2.1. This report has been prepared following consultation with the Council's Environmental Officer, Monitoring Officer, Internal Audit Manager, the Audit Commission, the 4Ps and the Council's Corporate Procurement Working Group. The Council's Scrutiny Management Board has also been involved in the development of the Code of Practice.
- 2.2. The Procurement Code of Practice has also been considered previously at management Team on 3rd October 2005, where it was agreed in principle subject to agreed amendments and a review of the Council's Constitution. Management Team agreed the final draft in principle on 13th March 2006.

3. Background

- 3.1. The profile of Procurement and the role played by an Authority's Procurement practice in achieving the organisation's corporate objectives have been raised following several events in recent years. These events include the following:
- 3.1.1. The abolition of CCT and its replacement with the imposition of a "Best Value Duty" in the late nineties.
- 3.1.2. The Byatt Report into Public Sector Procurement published in 2001 which was highly critical of the public sector's approach to procurement and resulted in the following recommendations for local Councils:
- Align Procurement and Best Value Reviews
 - Develop a Corporate Procurement Function
 - Engage Members
 - Improve regulations
 - Improve tender design, evaluation and contract management
- 3.1.3. The Egan report into Construction Industry operation that concluded that Councils should collaborate with Contractors and share risks in construction projects instead of being adversaries.
- 3.1.4. The ODPM's National Procurement Strategy (NPS) published in 2003 that set out milestones to measure Councils' progress in achieving the Strategy by 2007. Progress against the milestones is being assessed by the North East Centre of Excellence (NECE) one

of 9 Regional Centres of Excellence that were established to assist in delivery of the NPS. This role was extended in Spring 2005 to include the Efficiency agenda.

- 3.1.5. The Gershon report that identified that efficiency savings ought to be realised through a mixture of Business Process Re-engineering (non-cashable savings) and adopting a more sophisticated approach to procurement and collaboration (cashable savings).

4. Position Statement and Options Appraisal

- 4.1. The Council adopted a Procurement Strategy in September 2004, following extensive consultation. The Strategy includes action plans to cover the Council's own procurement processes (e.g. specific new projects and the management and review of existing contracts and other arrangements), a Training Plan to develop the Council's internal procurement abilities and a plan to ensure that the Milestones included in the National Procurement Strategy will all be addressed.
- 4.2. One of the targets in the latter action plan is that a Code of Practice for Procurement will be developed and adopted across the authority to ensure that the Council takes a uniform approach to the procurement process. The training plan includes development of a programme of training on the Code of Practice and the development of a Procurement Toolkit.
- 4.3. A first draft of the Code of Practice was prepared in January 2005 and considered by the members of the Council's Corporate Procurement Group. The feedback was included into the second draft, which was subject to wider consultation within the Council and externally through the Audit Commission and the 4Ps before being developed into a final draft for adoption.
- 4.4. The process of developing the Council's Procurement Strategy involved the Scrutiny Management Board and includes a continuing commitment that the Board will be involved in monitoring delivery of the Strategy. A presentation on the content of the Draft Code of Practice was made to the Scrutiny Management Board in April 2005 and feedback from that meeting was taken into account in developing the final draft.
- 4.5. Following production of the Second Draft, further consultation was undertaken with the Audit Commission, the Council's Monitoring Officer and Internal Audit Manager and the current "final draft" reflects the outcome of these consultations.

5. The link between the Code of Practice and Standing Orders

- 5.1. Procurement has been considered a minefield in the past and there is a need to regulate procurement activity for a number of reasons including to ensure that the Council's fiduciary duty to the tax payers is fulfilled and to ensure that persons involved in procurement exercises fully consider the various steps in the procurement process and the options available for each stage.
- 5.2. The code of practice includes how to take account of Corporate and Wider Issues in planning a procurement exercise, Contractor Selection, The Tender Process and Contract Monitoring. It includes pro-formae for use in reporting on and monitoring a procurement exercise and a final report that must be used for procurements throughout the authority. It is stressed, however, that any departures from normal practice should be considered carefully and in conjunction with advice from the Council's Corporate Procurement Manager and Monitoring Officer where appropriate.
- 5.3. The Code of Practice should reflect the authority's values and objectives. Issues relating to sustainability, the links between engaging local suppliers and obtaining value for money and how to deal with tenders that included "added value" are all

areas that were not previously given prominence in considering procurement issues but have been flagged up as being relevant in the Code of Practice.

- 5.4. The Council's current version of Standing Orders was approved in 2002. The document has been updated several times over the years but the current version does not take account of the Best Value Duty or the Council's modern Political Structure. It is also often necessary to seek to waive Standing Orders when seeking to work in Partnership, use "framework agreements" such as those developed by Central Government or appoint specialists where there is a limited supply chain.
- 5.5. It was originally intended that the Code of Practice would replace Standing Orders and take over as the regulatory framework to be applied to all procurement processes. Feedback from the Audit Commission suggested that this approach was considered to be fraught with potential difficulty and the final draft of the Code of Practice therefore includes Standing Orders as an Appendix to the Code and this report seeks to adapt Standing Orders to suit the Council's current approach to procurement.

6. The Contents of the Code of Practice

- 6.1. The Code of Practice is made up of the Code itself (around 32 pages) and a further 116 pages of appendices that provide templates and flowcharts for the various steps of the procurement process (these will make up the Procurement Toolkit) as well as standard forms for reporting on the completion of a procurement exercise and on the use of delegated responsibilities.
- 6.2. The Code itself is set out in a way that is intended to be easy to understand but there is, of necessity, some jargon within the text. A series of key questions are identified for each step of the process following a section of explanatory narrative.
- 6.3. The contents of the Code, in brief are as follows:

Corporate Issues

- Assessing need for the procurement including how it fits in with the Council's corporate objectives, financial issues such as ensuring that there is appropriate financial provision for the proposal, identifying and addressing service related issues, assessing risks and housekeeping issues such as the appropriate length of arrangement, whether the activity is "vires" and whether the project is of such a size or nature that a specific approach should be taken to managing it.

Wider Issues

- These issues would include whether there is scope for Collaborative Working, whether there is a need to stimulate a market where one does not exist, issues relating to social responsibility, equalities and the local labour market, environmental sustainability and whether E-procurement or E-tendering techniques are suitable for the proposal.

Contractor Selection

- This section outlines how to compile a list of suitable interested parties to bid for the work, how to apply the EU Directives and in-house financial limits, how to carry out desktop and practical evaluation of various applicants' aptitude for the Contract when required, how to complete Shortlist and to invite tenders.

The tender process

- What to consider in developing Evaluation Criteria, issues to consider in issuing Instructions to tenderers, matters relevant to developing a

Specification, the Conditions of Contract and the Tender Documents. How to manage issues that arise during the Tender Period, how to approach evaluation of tenders and what issues arise in tender acceptance that need to be sorted out during the “Pre-Contract” period.

Contract Monitoring

- The need to approach Contract Monitoring diligently and how to approach Monitoring meetings with contract staff, Reviewing deliverables, appropriate reporting mechanisms including Scrutiny, Executive, Management Team, links between the procured service and Best Value Performance Plan and Service Plans and setting annual targets to continuously improve the service.

Trading and Charging

- The Policy Framework recently established to deal with the new powers to trade and charge including how any proposal to “Trade” or to “Charge” for services must be approved by the Council’s Corporate Procurement Manager and appropriate Director prior to council approval. Descriptions of Trading (i.e. as exercised through a company structure with the need to keep accounts and decide what to do with profits) and Charging (i.e. as it applies to any discretionary service, that subsidies can be applied and the need to consider the effect on local businesses.) The need for the Business Case to be set out clearly and the need for an exit strategy if circumstances change

6.4. As stated above, some of the appendices have been developed to provide standard ways of reporting on procurement exercises so that it can be demonstrated that each step of the process has been considered and addressed. Others are intended to provide an easy reference to the various relevant policy documents that must be considered as part of a procurement exercise. The Appendices include the following:

- The Council’s Procurement Policy as adopted in September 2004.
- The Council’s Environmental Policy as adopted in October 2004.
- The Council’s Environmental Purchasing Guide, which links to the Council’s Environmental Policy and sets out the policy on sustainable and environmentally responsible purchasing.
- A guide to the EU Procurement Directives.
- The Procurement Checklist which summarises the issues raised in the Code of Practice in the format of a document that can be completed electronically as a procurement exercises progresses to detail how all of the issues raised in the Code of Practice have been appropriately addressed.
- Procurement Flowcharts that outline the steps in a procurement process and are intended to be used to plan an exercise to ensure that adequate time is allowed for each of the relevant issues to be considered and addressed.
- An outline of The Gateway Review Process formulated by the 4Ps for governance of complex or significant procurement exercises.
- Tenderer Evaluation Questionnaires a series of standard documents to be modified for use in selection of tenderers including a letter requesting company Information, a request for a technical reference, a request for health and safety information and a questionnaire for companies that are applying for inclusion on a standing approved list.

- A Tender Evaluation Report to be completed and included with any report to Executive on the outcome of a tender or other procurement exercise outlining what criteria were applied to the procedure and how each step of the process was conducted together with a declaration from the Lead Officer and appropriate Director as to the fact that the process was conducted in accordance with the Council's Procurement Code of Practice.
 - The Council's Standing Orders for Contracts
 - The Council's Trading and Charging Policy
 - A pro-forma to be completed relating to every situation under which Delegated Powers have been applied.
 - The Council's TUPE Policy
 - The SME Concordat
 - The Council's Fair-trade Resolution
 - The Council's – How to do Business with the Council Guide
 - The Council's Complaint procedure
- 6.5. It will be important to review and update the Code of Practice to ensure that the document evolves in line with increasingly sophisticated and complicated procurement practices in line with the ODPM's strategy to develop more collaborative Public Sector procurement exercises and to take account of some of the less obvious strategic issues in deciding how to award contracts or develop relationships.

7. Proposed amendments to Standing Orders

- 7.1. As part of the process of developing the Code of Practice, it became clear that there are issues within the latest (2002) Revision of Standing Orders. The copy of Standing Orders that is appended to the Code of Practice has therefore been altered to reflect up to date practices. The principal alterations are as follows:
- Introductory notes revised to include reference to Code of Practice
 - Suggested revisions to current limits for tender values
 - Redraft to ensure that reports made on conclusion of procurement exercise are in standard format required in Code of Practice
 - Amendment to procedure for compilation of Select Tender Lists to include companies that have applied through the web-site in response to ODPM's requirements that Council's publish opportunities to do business with the Council on websites.
 - References to "DSO" have been removed and replaced with "In-house services" and "Service Unit" to reflect repeal of CCT regulations.
 - Insertion of rule to relate to use of Framework Agreements such as the OGC etc.
 - Insertion to section on "Lowest Tender" to reflect possible "added value items"
 - Suggested revision of financial limits
 - Suggested clarification of position on valuation of Liquidated Damages
 - Inclusion of reference to use Council's Environmental Policy
 - Additional Costs thresholds above which reports must be made to Executive it is proposed that these should be percentages rather than absolute limits to prevent need for revision in future.
 - References to "Non-Commercial Considerations" are proposed to be scrapped in favour of use of the concept of Most Economically Advantageous Tender.

- Reference to EU legislation to include reference to thresholds set out in Code of Practice.
- Clarification that, in the case of negotiations to reduce the cost of a project, details of other tenders may not be disclosed until after negotiations are concluded.
- Land Transactions section revised in consultation with the Head of Corporate Property to take account of new powers to dispose of land at less than highest value in certain circumstances
- References throughout are made to “Cabinet” and have been replaced with reference to “Executive”

7.2. Some of these issues are of higher significance than others. Attention is therefore drawn to the following of the proposed alterations.

7.2.1. The financial limits for tendering exercises were set some time ago and are set at a fairly restrictive level. Whilst recognising the need to have limits in place, it is suggested that the Management Team review the limits and agree to set them at levels that are considered appropriate. The following table outlines the current position and a suggested set of limits to replace them.

Action required under Standing Orders	Existing Value	Suggested Value
Chief Executive / Appropriate Director to decide whether to seek quotations.	£7,500	£20,000
Minimum of 3 quotations to be sought	£7,500 to £35,000	£20,000 to £50,000
Advert to be placed in local press to invite interest or standing tender list to be used.	Over £35,000	Over £50,000
Advert to be placed in trade press	Over £100,000	Over £100,000

7.2.2. The section relating to compilation of Select Tender Lists has been expanded to reflect the results of the NPS milestone to advertise opportunities to do business with the Council on the Council’s website. There is a need to establish a system for dealing with enquiries raised in this way and to promote a system to engage businesses that are not yet “e-Enabled.” Future monitoring reports on progress against the Council’s Procurement Strategy will be made to include developments related to this.

7.2.3. There is a need to ensure that opportunities to take advantage of the efficiency savings available through use of the frameworks for appointing consultants or acquiring specialist equipment. An example is the Office of Government Commerce’s (OGC’s) frameworks for Project Management, Consultancy or IT equipment. The use of these frameworks can cut down on the considerable amount of time and other resources expended on advertisements and selection of tenderers by using a shortlist of contractors compiled by Central Government.

7.2.4. The Council adopted an Environmental Policy almost a year ago. In order to ensure that environmental considerations can be used in evaluation of proposals, there is a need to ensure that the Standing Orders will allow this. It is however, important to ensure that, when the evaluation of proposals takes environmental issues into account, the costs of the options are evaluated and explained as fully as possible.

7.2.5. Whilst delegation of powers is covered within the Constitution, from time to time opportunities can arise to purchase high value commodities at a discounted rate and where a decision needs to be made quickly to take advantage of the potential savings. A good example of these opportunities is vehicle acquisition. A resolution would need to be sought, subject to a recognised exception to Standing Order 1, upon condition that:

- The purposes for which such expenditure may be incurred are clearly defined
- Specific budget provision is made and not exceeded
- A report is submitted towards the end of the financial year identifying the expenditure incurred under this exception
- The Delegated Powers Pro-forma is completed and authorised by the Chief Executive or appropriate Director prior to purchase (Appendix 12 of the Procurement Code of Practice)

8. Next Steps

- 8.1. It is intended to arrange specific training sessions for Members and staff at various levels in the organisation outlining the specific role that procurement plays in the core elements of their work. The Regional Centre of Excellence are provided training through the Capacity and Skills Workstream. A session has been arranged for the Corporate Support Team raising awareness of the Procurement and the Gershon Efficiency agendas and their links to new CPA. This will also identify the immediate training needs to take full advantage of the training available through the NECE.
- 8.2. The toolkit will be pulled together using content from the Code of Practice including the flowcharts and standard reports. This will be used to provide an introduction to procurement for new staff and a readily accessible guide to procurement for practitioners who have already received training. The Clan system is already in place and will be used to further develop the toolkit in reaction to developments through central government, Council led initiatives and the work of NECE.
- 8.3. There will be a need to develop the Code of Practice to take account of adoption of future Council policies such as Concordats with SMEs, the Voluntary Sector and EMBs as required by the NPS. Additionally, new developments including, for example, the new OJEU Regulations will also need to be taken into account.
- 8.4. Following discussion with IDeA the Council has been asked to document the introduction of E-Procurement for use in an IDeA Knowledge Best Practice Guide for District Councils.
- 8.5. The Procurement Strategy monitoring report will include a section relating to necessary updates to the Code of Practice and progress with the Council wide Procurement Training Plan.

9. Implications

- 9.1. **Financial.** The area of procurement is seen as the principle means of providing early cashable savings under Gershon. Longer term, the business process re-engineering and collaborative working with others will lead to non-cashable process savings.
- 9.2. **Legal.** The Code of Practice is intended to support the Council's Standing Orders and assist staff in approaching procurement from an informed position.
- 9.3. **Policy.** The Code of Practice is in line with the requirements of the ODPM National Procurement Strategy and ought to be embedded into the culture of the organisation if continuing high CPA ratings are to be achieved.

- 9.4. **Risk.** The approach to procurement engendered through the code of practice is completely in line with the Council's policy on risk. The approach to major projects using Gateway Reviews and extensive consultation are designed to ensure that risk is accounted for at each step including the Contract Management phase.
- 9.5. **Communications.** There is a need to ensure that all Members and staff are aware of the content of the Code. This will be done by designed training as detailed in section 8 above.
- 9.6. **Corporate Plan.** The Code will support and enhance achievement of the Council's corporate objective.
- 9.7. **Service Plans.** As a strategic issue, procurement plays a significant role in achievement of Service Plans. The code will assist in ensuring that procurement is undertaken in a uniform and controlled way.
- 9.8. **Performance management and scrutiny.** Every procurement should be project managed to an appropriate degree – the code sets out how this should be done.
- 9.9. **Sustainability.** The Council's Environmental Policy is embedded in the Code and the developing Concordats with the Third Sector, SMEs and EMBs will further contribute to this agenda.
- 9.10. **Expenditure related to “well-being” powers.** There are no specific issues in the Code of Practice but it is clear that having a properly regulated and resourced approach to Procurement will assist in initiatives under this heading.
- 9.11. **Human resource implications.** The approach to procurement recommended in the Code includes considering workforce issues such a TUPE at an early stage in any procurement exercise. Continued pressure to collaborate with other public sector and private organisations will lead to more issues of this nature and it is important to assess the impact at an early stage.
- 9.12. **Information Technology.** The adoption of an E-Procurement system means that all Council expenditure will be through electronic means in the near future. The IT related implications of this have been met from within existing resources.
- 9.13. **Equality and Diversity.** These issues are relevant to tender evaluation and have been addressed in the relevant sections of the Code.
- 9.14. **Crime and Disorder.** There are no significant implications.
- 9.15. **Human Rights.** Issues such as Fair Trade and dealing with EMBs etc. are to be addressed as the Council achieves the milestones set out in the NPS. This will entail keeping the Code of Practice up to date relating to issues of this nature.
- 9.16. **Social Inclusion.** There are no specific issues relating to the Social Inclusion agenda but the Code of Practice will be used in support of this as necessary.
- 9.17. **Procurement.** This report relates specifically to procurement related issues, which have been explained throughout the report.

10. Recommendations

- 6.1 It is recommended that the Procurement Code of Practice (copy available within the Member's library) be adopted by the Council for application to all appropriate procurement activity and that the amendments to Standing Orders outlined in section 7 above be agreed including the revised limits for seeking quotations outlined in paragraph 7.2.1.

- 6.2 It is further recommended that the Council's Corporate Procurement Manager be authorised to implement the next steps outlined in Section 8 above and incorporate reports on progress to the Management Team and Scrutiny Panel in line with the reporting process outlined in the Council's Procurement Strategy.
- 6.3 That a resolution be sought of a recognised exception to Standing Order 1 as outlined in 7.2.5 and subject to the conditions outlined.

11. Background Papers/Documents referred to

- 11.1. This report has been prepared with reference to the following documents:
- 11.1.1. 2002 Version of the Council's Standing Orders and Financial Regulations.
 - 11.1.2. Various publications relating to the ODPM's National Procurement Strategy available on the ODPM website.