

Joint Report of Assistant Chief Executive, Legal
and Governance and Assistant Chief Executive,
Finance, Property and Information Services
to Cabinet

REVIEW OF CONTRACT STANDING ORDERS

1. Purpose of Report

- 1.1 To seek approval for revised contract procedure rules following a comprehensive review exercise.

2. Recommendation

- 2.1 That it be recommended to the Council that the revised Contract Procedure Rules attached as Appendix 1 to the report be adopted by the Authority as its Standing Orders for the making of Contracts pursuant to section 135 of the Local Government Act 1972.
- 2.2 That appropriate amendments be made to the Scheme of Delegations to delegate authority in all cases for the formal acceptance of tenders to the relevant member of the Senior Management Team.

3. Background

- 3.1 A local authority may make standing orders with respect to the making of contracts by the authority and is expressly required to do so by section 135 of the Local Government Act 1972 with respect to the making of contracts for the supply of goods and materials or for the execution of works.
- 3.2 The absence of any specific statutory requirement to make standing orders in relation to contracts for the supply of services reveals the relative age of the relevant provisions in the 1972 Act and it has long been recognised as best practice for standing orders to be applied to the making of all contracts which has been the practice of the Authority. The only exception relates to contracts for the sale of land where there are specific statutory requirements in section 123 of the Local Government Act 1972 that land may not be disposed of other than for the best consideration that can reasonably be obtained. This provides suitable protection without the need for specific procedure rules. Contracts for the sale of land will be approached either through the use of auction, sealed bids or private treaty negotiations with one or more interested parties with the underlying statutory obligation to secure market value.
- 3.3 EU law has developed progressively in the area of procurement with regard to works, services and supplies and provides an overarching framework of procedural rules which must be complied with which take precedence over

any internal procedure rules. These procedures apply to higher value contracts but do not comprehensively apply to all areas of the Authority's procurement in particular in relation to contracts for Services where there are specific categories to which the EU procedures do not apply.

- 3.3 Contract Standing Orders therefore continue to form an important part of the overall assurance framework of the Authority and their compliance is reviewed as part of the exercise leading to the production of the Annual Governance Statement and periodically through internal audit exercises.
- 3.4 Contract Standing Orders were last comprehensively reviewed in 2003. Although the existing provisions have remained essentially fit for purpose it has been identified through the AGS process that they should be re-examined to reflect changes in operating practice and EU legislation. Findings from specific internal audit reviews have also identified significant areas of non-compliance with Contract Standing Orders. This indicates both that some of the existing rules are out of date and do not reflect the realities of some day to day procurement practices, in particular with regard to the use of electronic communications, and also that there is a need to raise significantly awareness of those rules which remain essential to good governance and sound internal control. An overall review will assist in raising awareness of the relevant procedure rules and the importance of complying with them.

4. Current Position - Proposed Revised Contract Procedure Rules

- 4.1 The review exercise has now been completed. It has been undertaken by key officers responsible for legal, finance and procurement functions and their proposals have been reported to the Assistant Chief Executive Legal and Governance and the Assistant Chief Executive Finance Property and Information. They have acted as an editorial board to review and debate recommendations prior to any specific changes being finalised. This has been a necessarily time consuming exercise but the process has been extremely thorough and has led to the production of a sound up to date and fit for purpose set of contract procedure rules.

Strategic Alignment

- 4.2 The opportunity has been taken to relate the review of the procedure rules to the Council's Key Strategic Objective to promote the local economy through the potential which its commissioning role affords to local businesses to bid for contracts relating to Council functions. Due recognition has been given to the emerging role of Area Councils in commissioning works and services through Area Council budgets and the need for such expenditure to remain in Barnsley and benefit the local economy, whilst also recognising the constraints of existing legislation.

- 4.3 The revised Contract Procedure rules - this is considered a more suitable title than Standing Orders - are attached as Appendix 1. These rules do not depart fundamentally from the existing provisions but have been updated to reflect current best practice in procurement and relax some of the former procedural requirements which were considered to be unnecessarily onerous. The document has also been drafted in less technical language which is easier to understand and has been reduced significantly in length.

Officer roles

- 4.4 Reference is made throughout the document to Executive Directors (ie a member of the Council's Senior Management Team and hence this includes Assistant Chief Executives) being the officers for who are responsible to secure compliance with the relevant rules and procedures. The general provisions with regard to Officer Delegations allow an Executive Director to arrange for other officers to discharge their responsibilities on their behalf and inevitably much of the day to day activity with regard to procurement and contracting activity will be undertaken by other officers. However the overall responsibility and accountability remains with the relevant member of the Senior Management Team.
- 4.5 There is an unnecessary level of complexity in the Scheme of Delegations at present with regard to who has authority for the acceptance of a quotation or tender. There is a range of delegations between Cabinet Members and Executive Directors. There is an important distinction which is blurred at present between a decision giving the authority to *commit expenditure*, which may then involve a contracting process, and a decision to actually accept tender and enter into a contract as part of that process.
- 4.6 The latter decision will in most case be straightforward given the legal requirement to accept the most economically advantageous offer. It is therefore proposed that the Scheme of Delegation be amended to authorise the relevant member of the Senior Management Team to accept a tender so as to avoid the need for any additional delegated member approval. There will be exceptional circumstances where the evaluation of a tender will be less than straightforward where it will be necessary to exercise judgment as to whether to seek authority from members which is likely to require consideration by the full Cabinet.

Summary of Key Provisions

- 4.7 The essential changes to the Contract Procedure Rules relate to the following areas and the key elements of which are outlined in the following sections in the report.
- i) Exceptions to requirement for competition

- ii) Clarifications in relation to award of work directly in house
- iii) Frameworks
- iv) Select Lists
- v) Procedural Changes
 - Use of Electronic Tendering System
 - Revised procedures for witnessing opening of bids
 - Requirements for the execution of contracts
- vi) Review of requirements for financial security
- vii) Emphasis on supporting guidance on Procurement Intranet Site

4.7.1 Exceptions to the requirements for competition

- i) Legislation in relation to local authority contracting has always recognised the principle that there will be circumstances where the presumption that there should be competition may not be appropriate. Section 135 (3) of the Local Government Act 1972 provides that:

" .. standing orders with respect to contracts shall include provision for securing competition for such contracts and for regulating the manner in which tenders are invited, but may exempt from any such provision contracts for a price below that specified in standing orders and may authorise the authority to exempt any contract from any such provision where the authority are satisfied that the exemption is justified by special circumstances ".

There is less flexibility in the relevant EU rules where they apply and in such circumstances it is only possible to depart from the principle of seeking competition in very limited and exceptional circumstances.

- ii) Where the EU rules do not apply the Contract Procedure rules continue the existing position whereby competition is not required for contracts below £2,500 in value. Above those levels the requirement to obtain at least three quotations, rather than inviting formal tenders, now applies up to a contract value of £100,000. Previously the value was £50,000 and the increase is considered to be appropriate having regard to reflect increasing prices and values within the economy over the past decade.
- iii) The Executive Director has a discretion however not to invite at least three quotations if a different course of action is considered to be justified in any particular circumstances. The reasons for such a decision must be recorded and this requirement is consistent with the new legislative requirement that all decisions taken in respect of executive functions by officers must be recorded and the record open to public inspection.

- iv) There is an opportunity therefore for the exercise of some flexibility through the seeking of quotations in relation to the commissioning of work by Area Councils. There may be circumstances where it would be appropriate to obtain less than three quotations, in particular with regard to work of relatively low value which much of the expenditure commissioned by the Area Councils is likely to comprise, in order to provide particular opportunities to local businesses and community groups. The justification for doing so will be set out in the record of the decision.
- v) Previously formal tenders were required for any contract in excess of £50,000 in value and any exception to this was required to be authorised by the Assistant Chief Executives for Legal and Governance and Finance and Property. It is considered appropriate in present circumstances for any member of the Senior Management Team to be accountable for a decision not to seek competition for a contract value below £100,000 without obtaining the consent of Statutory Officers. Such officers are available to be consulted as and when appropriate.

It is suggested that such consultation will occur at least in the initial stages where decisions are taken not to invite three quotations in respect of expenditure relating to Area Council budgets given there is some sensitivity as to the potential for local members to necessarily be acquainted with some prospective bidders given the localised nature of the work and where there may be a need for members to declare interests. This approach is intended to protect elected members and secure confidence in the robustness of Area Council Commissioning.

- vi) In the case of contracts in excess of £100,000 in value the presumption is that competition will be sought through the use of formal tenders. There remains a discretion not to do so but the approval of the Assistant Chief Executive Legal and Governance and Finance and Property must be obtained to waive the general requirement and such approval must be sought through a report in writing setting out the reasons in support of such an approach.

The previous practice has been continued of setting out defined circumstances in which it *may* be appropriate not to seek competition but the application of those criteria must still be justified on a case by case basis. These defined circumstances are illustrative rather than exclusive. The purpose of this approach is to assist officers undertaking procurement exercises as to the kind of circumstances in which it may be viewed as legitimate to depart from the general presumption that competition should be obtained and thus reinforce that general presumption. This will assist to avoid a culture of assuming that exceptions to the requirement for competition will be approved as a matter of course in particular where the argument is that there is insufficient time to go through a competitive

process, where the underlying reason is generally poor project planning rather than genuine unforeseen urgency. It follows that the justification of not obtaining competition in such circumstances is likely to be viewed as exceptional and a robust approach to Project Management will avoid most situations where competition cannot be sought because there is insufficient time to do so.

The Council's electronic tendering system has been programmed so that payments will not be released unless either evidence of a competitive process or the securing of a waiver report has been registered on the system so it is not practicable for any individual officer to bypass these procedural rules with regard to competition.

4.7.2 Clarifications in relation to award of work In House

- i) Where work is undertaken in house using the Authority's own employees then there is necessarily no contract as an organisation legally cannot contract with itself. The Authority is subject to the overriding duty to secure Best Value contained in section 3 of the Local Government Act 1998 which is a relevant consideration in determining whether any particular activity should be subject to competition where there is an established market for the alternative delivery of a function or activity and where the law permits such activity to be undertaken other than by the Authority's own employees.
- ii) There is therefore no specific additional role for Contract Procedure rules to set out circumstances where work should be undertaken in house rather than externally. Contract Procedure rules apply to circumstances where the Council is contracting with third parties for the execution of works or the delivery of supplies or services. These rules are relevant however to any situation where the strategic decision has been taken market test any activity carried out through the Authority's own employees against external competition before determining whether that activity should be continued to be undertaken in house.
- iii) However the Contract Procedure rules recognise there may be situations where an existing in house service may be in a position to either bid for or be awarded contracting opportunities in relation to activities not presently undertaken in house and which are therefore not part of their core workload. These activities may afford additional opportunities to relevant in house services where they have sufficient capacity to undertake the work and may provide a better value for money solution for the Authority. Such opportunities may increase as the Authority progressively makes greater use of its powers to trade under the Local Government Act 2003 and builds up greater spare capacity through the use of local authority trading companies.

- iv) The rules therefore emphasise that in undertaking any procurement activity appropriate consideration should be given to inviting a bid from an in house service if they are in a position to undertake the work, or possibly to be awarded the work directly. A decision to award work in house, or to a Council trading company, following a competitive exercise, or directly without competition would still have to be consistent with Best Value principles
- v) The rules are specifically drafted to recognise the contractual relationship between the Council and NPS Barnsley in relation to property and procurement and facilities management services. Work which is within the scope of the core guaranteed workload of that contract is necessarily required to be awarded directly to NPS. These provisions are a continuation of the existing provisions which were introduced at the time of entering into the existing arrangement with NPS.

The rules further provide that NPS should be treated as the equivalent of an in house service for the purpose of other work which is not within the scope of the core guaranteed workload under the contract. Hence NPS must be given the opportunity to bid for any such additional work in any competitive exercise. However any award of the work to NPS following such exercise would need to be consistent with Best Value principles.

Given that NPS is local authority wholly owned company the Authority is permitted legally to award work directly to NPS if it is considered appropriate to do so having regard to Best Value principles.

The overall Value for Money position with regard to the NPS contract is secured by the fact that it is time limited and its provisions provide for a review in 2016.

4.7.3 Frameworks

- i) There has been a significant development since the existing Contract Standing Orders were drafted in collaborative procurement arrangements in particular the use of Frameworks. These are arrangements where the requirements of competition are secured through interested parties bidding to be included on a Framework. A contracting authority is then at liberty to "Call Off" a suitable provider from the Framework rather than have to seek and evaluate multiple bids. Alternatively a limited number of potential bidders can be selected from a Framework in order to undertake a "Mini Competition".
- ii) Either approach can facilitate a more efficient and expeditious procurement procedure in particular as it avoids the need for pre-qualifying assessments to be undertaken and restricts the number of bids which need to be

evaluated. Such an approach has been recognised in the most recent EU Directives as consistent with the general principles of transparency and fair competition laid down in EU law and the Directives and related UK regulations lay down prescribed procedures through which Frameworks must be operated.

- iii) The Contract Procedure rules require these EU based rules to be followed to ensure compliance with EU law bearing in mind that Frameworks will generally be utilised in respect of high value contracts above EU thresholds. Any officer undertaking a procurement exercise who wishes to make use of a Framework is required to consult the relevant Category Manager for the area of expenditure in question so as to verify that the use of a Framework is suitable in the circumstances and if so which one. There is also the need for legal advice to be sought where appropriate to ensure that the qualifying criteria and standard contract conditions attached to the Framework are complied with and that overall the interest of the Authority are protected. There remains the overriding obligation to ensure in using a Framework that the Authority is able to demonstrate Best Value.

The Procedure Rules also make clear that the use of other collaborative arrangements such as the use of purchasing consortia, for example the YPO, will secure compliance with the general requirement to secure competition.

4.7.4 Approved Lists and Selection of Bidders

- i) The basic principle of seeking competition to achieve Best Value outcomes necessarily involves a process of fair and transparent selection of bidders and between bidders. The Contract Procedure Rules repeat previous requirements to invite offers leading to the selection of a successful bidder either on an open or "restricted" –ie use of shortlisting – basis or through the use of Approved Lists.
- ii) There is considerably greater scope for the use of Approved Lists by the Authority and these are being developed by procurement officers. Approved Lists in the same way as Frameworks facilitate more expeditious and efficient procurement by addressing pre-qualifying criteria prior to any specific procurement exercise being undertaken. Pre-qualifying assessment to ascertain that a prospective bidder meets minimum thresholds with reference to issues such as technical competence, relevant experience, financial viability and health and safety can be addressed at the time of application to be added to an Approved List. A range of lists need to be developed further to with reference to work categories and contract values as not all prospective contractors will be suitable to be included on all lists that may be drawn up.

- iii) Approved Lists afford a particular opportunity to respond to one of the Authority's Strategic Objectives with regard to promoting the local economy and developing greater capacity within local businesses through the use of the opportunity to undertake work for the Authority. Local businesses can be encouraged pro-actively to apply to be included on Approved Lists for particular work. Through the use of these Lists there is the opportunity to target local businesses by including them from amongst firms who have applied to be included on such Lists on tender shortlists. The Contract Procedure Rules require that a minimum of two bidders with local connections be chosen from Approved Lists for inclusion on short lists so as to be given the opportunity bid for work, even if this results in the size of the shortlist being correspondingly increased.
- iv) Local Approved Lists can make a particular contribution to the commissioning of work through the Area Councils where there is an objective to secure that expenditure out of Area Council budgets will be retained within the local economy. This can be achieved by drawing up relevant lists of local firms to be used in relation to Area Council expenditure which means that essentially only locally based businesses will be approached.
- v) Similar principles can be applied in relation to the selection shortlists where the Contract Procedure Rules provide for at least two local bidders to be included on any tender shortlist.

In the case of the seeking of more informal quotations for contracts below £100,000 in value Executive Directors are required to give due consideration to the need to invite local businesses to quote. In the case of work commissioned by the Area Councils there will be the opportunity to focus exclusively on local businesses by the use of the proposed Local Approved Lists.

Due consideration needs to be given to the Local Government Act 1988 which restricts the ability of local authorities to make selections based on the locality based and other non-commercial characteristics of prospective bidders. However it is considered that the approach taken in the revised Contract Procedure Rules is sound as the focus on locality is only being taken into account in determining from whom formal bids will actually be sought. There is no intention neither does local government or EU law allow the location of the preferred bidder to be a criteria for the selection of the most advantageous tender.

4.7.5 Procedural Changes

- i) *Use of Electronic Tendering System*

All contracts above £2,500 in value are required to be advertised through the Council's Electronic Tendering system, Yor Tender. This does not preclude other means of advertising as appropriate but the electronic system provides an effective mechanism for consolidating all activity and information with regard to the letting of contracts and to secure proper compliance with Contract Procedure Rules.

The consolidation of all significant contracting opportunities on the Yor Tender system will assist in promoting the local economy by making it easier to identify opportunities to bid for work. All bidders must be registered on the System. It is recognised that there is a need for the Authority to be proactive and facilitate understanding of the use and operation of the system and appropriate action is being taken by procurement officers. This is a particularly important issue in relation to work commissioned by Area Councils where smaller local businesses and community groups may need more targeted assistance and guidance and in exceptional cases access to appropriate computer facilities.

All bids above the relevant value are required to be returned through the Yor Tender system. This secures maximum security and integrity of the tender submission and opening process and avoids potential difficulties such as tender submissions going astray or being submitted late or to the wrong location which then presents an issue as to whether or not such bids should be accepted.

ii) Revised procedures for witnessing opening of bids

The Yor Tender system provides a robust mechanism for the opening of bids to secure maximum transparency. Historically tender envelopes were held in the custody of the Borough Secretary and the opening of tender envelopes and the recording of the highest bidder has been required by Contract Standing Orders to be witnessed by a lawyer from the Borough Secretary's Department. The use of the electronic system renders these provisions obsolete given that bids are held securely on the system. The Procedure Rules now give responsibility for the witnessing of "opening", through the operation of the electronic system, to two officers from the relevant Directorate and in the case of tenders above £100,000 a representative from the NPS Procurement team is required to participate.

iii) Procedural requirements for the execution of Contracts

The Local Government Act 2000 requires local authorities to make specific provision in their Standing Orders with regard to the execution of contracts. In particular a contract value must be prescribed above which the contract will require two signatures.

This requirement was introduced at the time that the legislation came into force in respect of the operation of Executive Arrangements by local authorities which included for the first time powers for individual elected members to make decisions in respect of executive functions. Concern was expressed by the sponsoring Government Department (now the Department for Communities and Local Government) that this exposed local authorities to the risk of Executive members being able to sign contracts to bind their authority legally without the benefit of officer advice. Previously no contract could be authorised by elected members other than by a resolution of a Committee. Whilst this does seem to be a somewhat excessive concern which has introduced additional administrative complexity the Authority is required to make appropriate provisions in its Standing Orders.

The relevant thresholds have been revised in the Contract Procedure Rules to reflect current contract values and it has been made clearer that signature of contracts should involve officers of appropriate seniority. Any contract in excess of £2,500 is required to be signed by two officers and at least one of those officers should be an Executive Director or Assistant Director up to a value of £100,000. Contracts in excess of £100,000 must be signed by two Executive Directors or Assistant Directors and at least one of those officers shall be the Assistant Chief Executive Legal and Governance or their authorised signatory.

Contracts required to be executed under Seal are still required to be executed by the Assistant Chief Executive Legal and Governance or their authorised signatory.

4.7.6 Review of requirements for Financial Security

In the light of increasing contract values and also the increasing cost of bonds and other related security the Contract Procedure Rules now provide that appropriate security shall be taken in the case of contracts in excess of £250,000 in value. Below that threshold it is a matter of judgment for the relevant commissioning officer whether or not security such as a bond, guarantee or the use of retentions is considered to be appropriate in the circumstances.

4.7.7 Emphasis on supporting guidance on Procurement Intranet Site

The Contract Procedure Rules provide the essential framework and safeguard to secure good procurement practice and effective internal control in contracting. However it is essential that commissioning officers have access to complementary advice and guidance. The existing Standing Orders contain a Code of Practice. However this has been progressively

replaced and enhanced by the development of comprehensive guidance on the Procurement site on the Council Intranet. Officers are now expressly referred to this guidance.

There is a need to have a programme of awareness raising for key officers to explain the relevant changes to the Contract Procedure Rules and also to emphasise the importance of ensuring their proper compliance. This will be arranged during the period prior to the formal adoption of the revised Contract Procedure Rules by the full Council.

5. **Proposal**

- 5.1 That revised Contract Procedure Rules be recommended to Council for approval and that appropriate amendments be made to the Scheme of Delegations with regard to authority for the acceptance of tenders.

6. **Employee Implications**

- 6.1 None specific. There will be a programme of raising of awareness and guidance for key officers involved in procurement activities prior to the implementation of the Revised Contract Procedure Rules.

7. **Financial Implications**

- 7.1 There are no direct financial implications. The Revised Contract Procedure Rules will assist the Authority in securing that it obtains value for money in its contracting activities in accordance with its statutory Best Value obligations.

8. **Background Papers**

- 8.1 Existing Contract Standing Orders
Relevant Local Government and EU Legislation

9. **Officer Contact**

- 9.1 Andrew Frosdick Ext 3001
Frances Foster Ext 3163

BARNSELY METROPOLITAN BOROUGH COUNCIL

CONTRACT PROCEDURE RULES

Updated 26 September 2013

CONTRACT PROCEDURE RULES

INDEX

	Page No
Definitions	3
1. Introduction	4
2. Pre Procurement Requirements	6
3. Contracts up to and including £100,000	9
4. Contracts above £100,000 where EU Thresholds do not Apply	10
5. Exceptions to Requirements of Competition	11
6. Nominated/Named Sub-Contractors and Suppliers	13
7. Contracts with an Estimated Value at or above the Relevant EU Threshold	14
8. Frameworks	15
9. Advertising for Quotes and Tenders	15
10. Submission and Opening of Quotations and Tenders	15
11. Errors in Quotations and Tenders	17
12. Abnormally low Tenders	17
13. Evaluation of Quotations and Tenders	17
14. Post Tender Negotiations	18
15. Acceptance of Quotations/Tenders and Award	19
16. Contracts	20
17. Variations	21
18. Performance of Contracts – Security	21

Definitions

Approved List:	means a list of suppliers of works, goods or services that have been vetted on behalf of the Council and placed upon an approved list(s). (Please see Category Manager for details.)
Barnsley Norse:	means Barnsley Norse Limited.
Category Manager:	means the officer designated as Category Manager for a key area of spend. Category Managers are identified on the Procurement intranet and in the Council's Procurement Strategy.
Constitution:	Means the Council's constitution particularly 'Terms of Reference of the Full Council, Regulatory Boards and Committees and functions delegated to Officers', 'Responsibility for Executive Functions Officer Delegations' and 'Part 2 the Cabinet'.
Executive Director:	means any member of the Council's Senior Management Team or the authorised representatives of any of those officers.
Framework Agreement:	means an agreement with a supplier or suppliers to establish terms governing contracts that may be awarded during the lifetime of the Framework Agreement. Current Framework Agreements are listed on the Procurement intranet.
LEA:	means Local Education Authority.
Letter of Intent:	means typically a letter from an employer to a contractor (or from a main contractor to a sub-contractor) indicating the employer's intention to enter into a formal written contract for works described in the letter and asking the contractor to begin those works before the formal contract is executed. While a letter of intent may come in many forms, it is essentially a communication expressing an intention to enter into a contract at a future date.
Member:	means a Member of the Council also known as 'Councillor'.

NPS Barnsley:	means NPS Barnsley Limited.
OJEU:	means the Official Journal of the European Union.
Records Retention Policy:	means the Council's Record Retention Policy located on the intranet within the Records Management Section (Retention Guidelines).
Rule(s):	means these Contract Procedure Rules.
YORtender:	means the Council's electronic procurement system.

1. Introduction

- 1.1 These Contract Procedure Rules set out the procedures to be followed in relation to contracts, whatever the method of payment, such as for the purchase and sale of goods, works and services, entered into by or on behalf of the Council. This would include LEA schools and circumstances when the Council is accountable body. They aim to ensure a system of fairness, transparency and probity and facilitate the Council achieving value for money.
- 1.2 These Rules should be read and acted upon in conjunction with the Council's Constitution and Financial Regulations, the Scheme for Financing Schools, the Codes of Conduct for Officers and Members, the Council's Procurement Strategy and the guidance available on the Procurement intranet.
- 1.3 These Rules are subject to UK legislation and the EU procurement rules which include the EC Treaty and the Public Contract Regulations 2006.
- 1.4 All Council procurements and contracts must comply with UK legislation, EU procurement rules, these Rules and the other matters referred to in Rule 1.2 above. Additionally where the Council is utilising grant funding, the terms and conditions of grant must be examined closely and complied with.
- 1.5 These Rules do not apply to:
 - (a) contracts of employment which make an individual a direct employee of the Council. (These Rules do apply to contracts for recruitment agency services and the employment of consultants or agency staff).

- (b) agreements regarding the acquisition, disposal or transfer of land for which provision is made within the Local Government Act 1972 and in relation to which Financial Regulations apply.
- 1.6 All values stated in these Rules are exclusive of VAT.
- 1.7 All Executive Directors are responsible for ensuring officers within their Directorate comply with these Rules.
- 1.8 Any failure to comply with these Rules may result in disciplinary action against the officer(s) concerned. Officers and Members must exercise the highest standards of conduct, integrity and impartiality when involved in the procurement, award and management of contracts. The Council's Anti-Fraud and Corruption Policy must be complied with.
- 1.9 Any difference of opinion regarding the meaning of these Rules shall be resolved by the Assistant Chief Executive (Legal and Governance).
- 1.10 Officers should ensure that they have the approval(s) in place to authorise the expenditure, procurement or sale of goods, works or services. (The approval of an Executive Director, or Cabinet Spokesperson, or Cabinet, or Council whichever is required in accordance with the Council's Constitution).
- 1.11 Proper and accurate records must be kept of all aspects of the procurement process, including: steps taken, selection and evaluation of bidders, decisions made and approvals obtained etc. All documentation must be retained in accordance with the Council's Records Retention Policy. Records wherever practicable should be in electronic form and in PDF format.
- 1.12 In exceptional circumstances waivers, outside the scope of waivers covered by Rule 5 (exceptions to competition requirements) may be made to these Rule(s) where in accordance with the procedure set out in Rule 1.12(a) below the relevant Executive Director has obtained the approval of the Assistant Chief Executives (Legal and Governance) and (Finance, Property and Information Services).
 - (a) The relevant Executive Director shall prepare a report in the form set out in Appendix 1 and submit it to the procurement team at NPS Barnsley for consideration by the Assistant Chief Executives (Legal and Governance) and (Finance, Property and Information Services). Approval and/or comments shall be provided in the format set out in Appendix 1. The relevant Executive Director shall retain a copy of the report and a record of the decision made.
 - (b) The procurement team at NPS Barnsley shall maintain a register of all such exceptions.

- 1.13 These Rules shall be reviewed annually by the Assistant Chief Executive (Legal and Governance) in consultation with the Council's Strategic Procurement Group.

2. Pre Procurement Requirements

The Rules below set out what should be considered before undertaking any procurement activity.

- 2.1 Prior to undertaking a procurement exercise officers must ensure that:
- (a) they contact the appropriate Category Manager responsible for the type of goods, works or services being procured. Contact details for Category Managers are available on the Procurement intranet and in the Council's Procurement Strategy. Where an officer is unable to identify the appropriate Category Manager the officer should contact the procurement team at NPS Barnsley;
 - (b) they take all necessary legal, financial (including insurance) and other professional advice (for example procurement, health and safety and risk management). Officers should have regard to current Council policies, procedures and standard documentation available on the Procurement intranet ;
 - (c) a contract value is calculated (irrespective of the method of payment) in accordance with EU procurement rules (irrespective of whether they apply) as explained in guidance found on the Procurement intranet. This will include, amongst other things, the whole life costs for the full duration of the contract and any optional period of extension and any maintenance or continuing costs. Contracts should not be artificially divided into 2 or more separate contracts in an attempt to avoid these Rules or the EU procurement rules;
 - (d) the Council's requirements are clearly documented. This may be in the form of a specification or an explanation of the detailed outcomes that need to be met to achieve the Council's requirements, as the circumstances dictate. This is an important exercise since this document will form the basis of any contract. Also where applicable a business case proportionate to the procurement's features should be prepared;
 - (e) every effort is made to make the best of the Council's buying power by aggregating purchases whenever possible. Although consideration should be given in all cases to whether it is appropriate to divide the Council's requirements into smaller lots;
 - (f) they are satisfied key stakeholders including Members, have been identified and consulted;

- (g) any risks associated with the procurement/contract are identified, assessed and recorded together with the actions required to manage and maintain them at an acceptable level as part of the procurement;
- (h) In relation to contracts over £250k, consideration is given to carrying out a Gateway Review or similar process advised by the procurement team at NPS Barnsley and Category Managers;
- (i) the course of action taken will represent Value for Money for the Council and consideration given where applicable to the requirements of the Public Services (Social Value) Act 2012;
- (j) existing arrangements (see Rule 2.2 and 2.3 below) are considered and utilised where appropriate and after taking advice in accordance with (a) above, such as in-house providers, corporate contracts, existing collaborative procurement arrangements and Approved Lists;
- (k) where grant funding is being utilised, officers have obtained full details of the funder's requirements including terms and conditions. This is important since funders may prescribe rules regarding the processes to be followed;
- (l) the proposed use of E-auctions must be agreed in advance with the Assistant Chief Executives (Legal and Governance) and (Finance, Property and Information Services); and
- (m) an initial equality impact assessment is carried out to ascertain whether a detailed Equality Impact Assessment (EIA) is required to inform the procurement process and subsequent contract management phase. The EIA toolkit can be found on the Procurement intranet.

2.2 Existing Arrangements

(a) Collaborative Procurement Arrangements

Consideration should be given to whether any existing collaborative arrangements would be appropriate. Collaborative procurement arrangements include procurement arrangements with another local authority, government department, or public service purchasing consortium. This category would include:-

- Framework Agreements.
- Purchasing Consortium of which the Council is a Member (for example YPO).

Due diligence needs to be carried out to ensure the legal requirements have been met and it is appropriate and suitable for the Council to make use of any such arrangement. Legal Services, Category Managers and the procurement team at NPS Barnsley should be contacted for advice in connection with this process. In these circumstances no exception or exemption to these Rules is required.

(b) Corporate Contracts

Where a corporate contract is in place with a single supplier for specific goods or services, then these should be used unless there are good reasons why this would not be the best course of action for the Council.

(c) Approved Lists

In circumstances when EU thresholds do not apply, the Council may have an Approved List. Officers should ascertain whether an Approved List exists and if so whether it is appropriate to use it. Officers should consider the Approved List procedure located on the Procurement intranet

2.3 In-house Providers

(a) Before commencing any proposed procurement process the relevant Executive Director must consider the need to consult any other Executive Director (or in the case of their own directorate the appropriate Assistant Director) who may be able to provide the works, services, or goods required:

(i) to determine whether the works, services or goods can be provided in-house. If so, the relevant Executive Director may decide, subject to value for money considerations, not to seek competition but to arrange for the works, services or goods to be provided in-house. The relevant Executive Director(s) will record their decision; or

(ii) where (i) above does not apply, to determine whether the Executive Director/Assistant Director would like to submit an in-house bid and if so, then they shall be included in the list of contractors invited to quote/tender under these Rules.

(b) (i) For property and procurement services (asset management, design services, quantity surveying, project management and corporate procurement) provided by NPS Barnsley and facilities management contract services (cleaning, catering, courier and mobile caretaking services) provided by Barnsley Norse, included in the respective Service Agreements with NPS Barnsley, the Council should offer the work to NPS

Barnsley or Barnsley Norse, unless this is inappropriate considering the provisions of those Service Agreements. The Council's Strategic Property and Procurement Team should be contacted with any queries officers may have in relation to this.

- (ii) Where Rule 2.3(b)(i) does not apply, for the purposes of Rule 2.3(a)(ii) the Managing Director of NPS Barnsley shall be regarded as an Executive Director of the Council who may be able to provide works and services for another Executive Director of the Council and may submit an in-house bid.
- (c) (i) If the Executive Director referred to in 2.3(a) decides to proceed in accordance with Rule 2.3(a)(i) or (ii) or is otherwise invited to tender, the Executive Director of the in-house service may obtain quotations/tenders in respect of supplies of goods, equipment, services or elements of the works that it is proposed are ordered or sub-contracted from a supplier/sub-contractor to enable a quotation/tender to be prepared. The procedures to be adopted for selection of a supplier/sub-contractor shall be those set out in these Rules subject to the provisions of this Rule 2.3(c). All other Rules shall apply where applicable.
- (ii) Every such invitation to a supplier/sub-contractor shall include a statement to the effect that:
 - The quotation/tender is to be used only for the purpose of compiling a tender or quotation for works or services which the Executive Director intends to submit.
 - There is no obligation on the part of the Council to order any supplies or work from the supplier/sub-contractor or any other supplier/sub-contractor.
 - All such bids will be treated as confidential and will not be used other than for the purposes for which they are sought.
- (d) A list of in-house services is available on the Procurement intranet.

3. Contracts up to and including £100,000

- 3.1 For contracts valued up to and including £2,500 an Executive Director shall proceed in a manner which ensures value for money and the efficient management of the service. Where possible this process shall prioritise the placing of orders with local businesses.

- 3.2 For contracts above £2,500 and up to and including £100,000 the Executive Director must invite at least 3 quotations via YORtender. Where appropriate at least 2 of the companies invited to quote should be local businesses.
- 3.3 In exceptional circumstances and considering all the information available an Executive Director may decide that it is justified to invite less than 3 quotations in a particular instance or type of transaction. In this situation a report must be prepared and the procedure followed as set out in Rule 5.2.
- 3.4 Where a suitable Approved List exists it may be used for the purpose of obtaining quotes in accordance with the Approved List procedure.

4. Contracts above £100,000 where EU thresholds do not apply

There is guidance available on the Procurement intranet site in relation to all procedures. The relevant Executive Director should consider all the circumstances to determine the most suitable tendering procedure.

4.1 Approved Lists

Where a suitable Approved list exists it may be used for the purpose of inviting tenders in accordance with the Approved List procedure.

4.2 Restricted Procedure

Using a restricted procedure potential suppliers are invited to apply, within such period as may be specified, for permission to tender. Following an assessment of the applications to tender at least 5 suppliers (where there are 5 or more who meet the pre-qualification requirements) should be selected to receive an invitation to tender. In the event that the 5 suppliers selected do not include at least 2 suppliers that are considered local suppliers, up to 2 additional suppliers that have applied and are considered to be local may be selected to receive an invitation to tender provided they meet the minimum threshold set by the pre qualification requirements. Also the selection of an in-house potential supplier, who will not be required to pre qualify should be in addition to the minimum or maximum number of tenderers required. If fewer than 5 suppliers have applied who meet the pre qualification requirements, then all those who have applied and meet the pre qualification requirements shall receive an invitation to tender. Where, in this situation, officers are concerned there may not be adequate competition, they should obtain advice from the procurement team at NPS Barnsley.

Pre-qualification

The selection of any potential supplier must be on the basis of a consistent, fair, justifiable and rational approach. The policy relating to use of pre-qualification questionnaires is available on the Procurement intranet and should be considered. Details concerning the scoring of a pre-qualification questionnaire (PQQ) used at selection stage should be made available to potential suppliers prior to their completion of it, as must any pass mark for pre qualification set by the Council. Standard PQQs and further guidance is available on the Procurement intranet.

4.3 Open Procedure

Using an open procedure the contract is advertised and suppliers invited to submit a tender by a certain date (being not less than 14 days from the date of the notice).

4.4 Competitive Negotiation Procedure

- (a) Where the relevant Executive Director considers that the tendering procedures set out in Approved Lists Rule 4.1, Restricted Procedure Rule 4.2, and Open Procedure Rule 4.3 are not suitable then the proposal should be discussed initially with the procurement team at NPS Barnsley to consider whether the use of a competitive negotiated procedure is justified in the circumstances.
- (b) Before commencing a competitive negotiation procedure the relevant Executive Director shall obtain the approval of the Assistant Chief Executives (Legal and Governance) and (Finance, Property and Information Services) in accordance with the procedure set out in Rule 4.4(c) below.
- (c) The relevant Executive Director shall prepare a report in the format set out in Appendix 1 explaining the proposed course of action and the reasons why use of a competitive negotiation procedure is the recommended course of action. The report must be submitted to the procurement team at NPS Barnsley for consideration by the Assistant Chief Executives (Legal and Governance) and (Finance, Property and Information Services). Approval and/or comments shall be provided in the format set out in Appendix 1. The relevant Executive Director must ensure an electronic version of the report and approval is saved (PDF format) and uploaded onto YORTender.

5. **Exceptions to Requirements of Competition (where EU procurement rules do not apply)**

- 5.1 Where the Public Contract Regulations 2006 apply they should be followed.

- 5.2 For contracts above £2,500 and up to and including £100,000 in exceptional circumstances and considering all the information available an Executive Director may decide that it is justified to invite less than 3 quotations in a particular instance or type of transaction. The relevant Executive Director must explain their reasons for this by completing the proforma attached at Appendix 1 and contact the procurement team at NPS Barnsley to request a waiver reference number. The relevant Executive Director must ensure the completed Appendix 1 form is signed, an electronic version saved (PDF format) and uploaded onto YORtender and a copy sent to the procurement team at NPS Barnsley.
- 5.3 For contracts above £100,000 (not covered by Rule 5.1 above) Rules 4.1, 4.2 and 4.3 shall not apply where in accordance with the procedure set out in Rule 5.4 below the relevant Executive Director has obtained the approval of the Assistant Chief Executives (Legal and Governance) and (Finance, Property and Information Services) to waive Rule 4.1, 4.2 or 4.3 and allow an exception to the requirement of competition.
- 5.4 The relevant Executive Director shall prepare a waiver report in the form set out in Appendix 1 explaining the proposed course of action and the reasons why a waiver to Rule 4.1, 4.2 and 4.3 is required (see Rule 5.6 below). The report must be submitted to the procurement team at NPS Barnsley for consideration by the Assistant Chief Executives (Legal and Governance) and (Finance, Property and Information Services). Approval and/or comments shall be provided in the format set out in Appendix 1. The relevant Executive Director must ensure an electronic version of the report and approval is saved (PDF format) and uploaded onto YORtender. The approval of the Assistant Chief Executives (Legal and Governance) and (Finance, Property and Information Services) is not required in the circumstances set out below in Rule 5.6(h) and (i) although a record of the Executive Director's decision should be kept.
- 5.5 The procedure set out in Rule 5.4 above is in addition to any other approval that is required, for example to incur the expenditure, in accordance with the Council's Constitution.
- 5.6 The reasons why a waiver to the Rules regarding the requirements for competition is justified, may include the circumstances below, provided that such an approach is consistent with the Council's duty to obtain value for money and its procurement strategy and policies.
- (a) the purchase of proprietary or patented goods or materials which in the opinion of the appropriate Executive Director are obtainable only from one firm, and where no equivalent or no reasonably satisfactory alternative is available;
 - (b) the execution of works or supply of services of a specialised nature which in the opinion of the appropriate Executive Director are carried out by only one or more firm(s), and where no equivalent or no reasonably satisfactory alternative is available;

- (c) the purchase of goods or materials, the execution of works or supply of services for which the appropriate Executive Director considers that no genuine competition can be obtained;
 - (d) the purchase of a named product required to be compatible with an existing installation as approved by the appropriate Executive Director for which no equivalent or no reasonably satisfactory alternative is available;
 - (e) Additional works, services or supplies are required to the original contract that are within the original scope, provided the overall value is not greater than 50% of the original contract;
 - (f) the purchase of a work of art or museum specimen as approved by the appropriate Executive Director;
 - (g) purchases, works and services required by the appropriate Executive Director so urgently (because of circumstances not foreseeable and not attributable to the Council) as not to permit compliance with the requirements of competition;
 - (h) the appointment of a developer to exercise functions of the Council under Section 278 of the Highways Act 1980;
 - (i) the instruction of, advice from, or service provided by Counsel.
- 5.7 The procurement team at NPS Barnsley shall maintain a register of all such exceptions.

6. Nominated/Named Sub-Contractors and Suppliers

- 6.1 Where a sub-contractor or a supplier is to be nominated/named by the Council to a main contractor quotations or tenders must be invited in accordance with these Rules.
- 6.2 The terms of any invitation for nominated/named sub-contractors or suppliers must be compatible with the main contract and must require that, if selected, the firms would be willing to enter into:
- (a) a contract with the main contractor on terms which indemnify the main contractor against the main contractor's own obligations under the main contract in relation to the work or goods or materials included in the sub-contract;
 - (b) an agreement to indemnify the Council in such terms as may be prescribed.

7. Contracts with an estimated value at or above the relevant EU threshold

7.1 Where a contract is equal to or exceeds the relevant EU threshold the EU procurement rules apply (Public Contract Regulations 2006 and EU Directives).

7.2 The EU thresholds at 1 January 2012 are:

Supplies and Services - £173, 934

Works - £4,348,350

The thresholds change every 2 years and are scheduled to change again on 1 January 2014. The procurement intranet is kept up-to-date with details of the current thresholds and provides guidance on the EU procurement rules. Further help and guidance can be obtained by contacting the procurement team at NPS Barnsley.

7.3 Prior to the publication of an OJEU notice it must be checked by a member of the procurement team at NPS Barnsley.

7.4 Services in the Public Contract Regulations 2006 are distinguished as either part A or part B (part A or part B of schedule 3 of those regulations). The Public Contract Regulations 2006 apply in full to part A services and apply in a limited extent to part B services. For example, in relation to part B services there is no requirement to publish an OJEU notice but there is a requirement to publish a contract award notice. Part B currently includes amongst others, education services and health and social services. Officers should check - which category applies to the services being procured. Any EU guidance with regards to part B services should be followed.

7.5 The award procedures set out in the Public Contract Regulations do not apply to part B services and officers must therefore follow Rule 4 in relation to the inviting of tenders and these Rules generally in respect of the procurement of part B services.

7.6 Where the relevant Executive Director proposes to use the negotiated procedure pursuant to the Public Contracts Regulations 2006, the Executive Director shall obtain the approval of the Assistant Chief Executives (Legal and Governance) and (Finance Property and Information Services). The relevant Executive Director should prepare a report in the form set out in Appendix 1 explaining the proposed course of action and the reasons for it. The report should be submitted to the procurement team at NPS Barnsley for consideration by the Assistant Chief Executives (Legal and Governance) and (Finance, Property and Information Services). Approval and/or comments shall be provided in the format set out in Appendix 1. The relevant Executive Director should ensure an electronic version of the signed approved report is saved (PDF format) and uploaded onto YORtender.

8. Frameworks

- 8.1 Where it is considered that the procurement of a Framework Agreement is the most appropriate means to meet the Council's requirements this must be discussed with the appropriate Category Manager who may refer the proposal for approval by the Council's Strategic Procurement Group.
- 8.2 Framework Agreements shall be procured in accordance with these Rules and the EU procurement rules where the relevant EU thresholds apply. Procedures described by the Public Contracts Regulations 2006 shall apply to all aspects of the procurement and operation of the Framework Agreement including:-
- the procurement methodology;
 - any orders placed under the Framework Agreement;
 - re-opening of competition between contractors/suppliers on the Framework;
 - the duration of a Framework Agreement (which shall not normally exceed 4 years).

9. Advertising for Quotes and Tenders

- 9.1 For contracts above £2,500 YORtender shall be used (as a minimum) for advertising.
- 9.2 Consideration should be given in all cases as to whether wider additional advertisements are necessary to identify appropriate potential suppliers, for example, specialist/trade journals.
- 9.3 Where the EU thresholds apply, a contract notice must be published in the OJEU **BEFORE** any other notice/advertisement is published and no other notice/advertisement should contain any more information than that published in the OJEU.

10. Submission and Opening of Quotations and Tenders

10.1 Contracts up to and including £2,500

The appropriate Executive Director must ensure that there is a system in place which can demonstrate the fairness and transparency of the process and records are saved electronically and kept in accordance with the Council's Records Retention Policy.

10.2 Contracts above £2,500

Submission - YORtender should be used for the return of quotations and tenders in accordance with the system's requirements.

10.3 Opening

- (a) Quotations above £2,500 and up to and including £100,000 - shall be opened at the same time by two representatives of the relevant Executive Director, one representative is required to be independent of the process. Where an in-house bid is involved, the representatives opening the quotation must not have been involved in the preparation of the in-house bid.
- (b) Tenders above £100,000 - shall be opened at the same time by a representative of the relevant Executive Director and a representative of the procurement team at NPS Barnsley. Where NPS Barnsley have submitted a tender, a member of the Council's Strategic Property and Procurement team will also be present. Where in-house bids are involved, the representatives opening the tenders must not have been involved in the preparation of the in-house bid.
- (c) When opening a quotation or tender the representative of the relevant Executive Director shall ensure that a hard copy of the Quotation/Tender Opening Form is fully completed. A template Quotation/Tender Opening Form is available on the Procurement intranet.
- (d) The Quotation/Tender/Opening Form shall be retained by the Executive Director representative or member of the procurement team at NPS Barnsley, when such a representative is present at the opening. This should be scanned (PDF format) into the project file on YORtender for future reference and retained in accordance with the Council's Record Retention Policy.
- (e) The form of tender and/or other document detailing the price/prices information shall be printed off and initialled by the two officers present at the time of opening. These documents will also be scanned (PDF format) into the project file on YORtender and retained in accordance with the Council's Record Retention Policy.

10.4 Late Quotations/Tenders

Late bids may only be accepted with the approval of the Assistant Chief Executive (Legal and Governance) where the bidder has gained no advantage as a result of the late submission for reasons where, for example, there is evidence that technological reasons have prevented the submission on time, through no fault of the bidder.

11. Errors in Quotations/Tenders

- 11.1 Certain contract documentation will prescribe the rules to be adopted in relation to errors in quotations/tenders. In other cases the Council will advise bidders of the approach that will be taken.

Errors in quotations/tenders shall be dealt with in one of the following ways:

- (a) The bidder shall be given details of the error(s) found during the examination of the quotation/tender and shall be required at the sole option of the Council to confirm without amendment or withdraw the quotation/tender ; or
- (b) Amending the quotation/tender to correct genuine error(s) provided that, in this case, apart from these genuine errors no other adjustment, revision or qualification is permitted.

All amendments shall be fully recorded with justification for the action taken. Where necessary, advice should be sought from Legal Services.

12. Abnormally Low Tenders

Where a tender appears abnormally low it may not be rejected without:

- giving the tenderer an opportunity to explain the tendered price (such explanation to be given in writing),
- considering the evidence provided, and
- obtaining the written approval of the Assistant Chief Executives (Legal and Governance) and (Finance, Property and Information Services).

13. Evaluation of Quotations and Tenders

- 13.1 Before quotations/tenders are invited, it must be recorded in writing whether the lowest price or the most economically advantageous tender (i.e. price/quality) is to be accepted. Where both price and quality are to be factors (where "most economically advantageous" quotation/tender applies) the quality criteria must be identified and the weighting between price and quality established, recorded and where the estimated value exceeds £100,000 approved by the Assistant Director, Business and Financial Services before invitations are issued. The criteria, sub-criteria and weightings should be made available to bidders as early as practicable in the procurement process and not later than the invitation to tender/quotation stage. Sub-criteria and weightings cannot be used which have not previously been brought to

a bidder's attention. More information is available on the Procurement intranet.

- 13.2 Records should be kept of the evaluation process, for example, criteria, sub-criteria, weightings, individual and consensual scoring (signed by the individuals involved in the evaluation) clarifications and reasons for decisions. Records should be saved electronically (PDF format) and stored in accordance with the Council's Records Retention Policy.
- 13.3 Following the receipt of bids the Council has the opportunity, if necessary, to request in writing clarification of a bid and any response from bidders should also be in writing. (Prior to the submission of their bids, bidders have an opportunity, if they consider necessary, to request in writing clarification regarding the Council's requirements. Any response from the Council to bidders should also be in writing.) There are rules that must be followed to ensure fairness and transparency during these clarification phases and details can be found on the Procurement intranet.

14. Post Tender Negotiations (Negotiations after receipt of formal bids and before award of contract)

- 14.1 Where EU procurement rules apply they should be followed. Post tender negotiations are not allowed in EU open and restricted procedures.
- 14.2 Where EU procurement rules do not apply and the relevant Executive Director considers that post tender negotiations are in the Council's interests and may achieve added value then post tender negotiations may exceptionally be appropriate. Post tender negotiations must only take place where they do not distort competition or disadvantage any bidder. The process should be transparent and non-discriminatory and ensure bidders are treated equally.
- 14.3 Post tender negotiations with any tenderers must be in accordance with the following conditions:
 - (a) Approved by the relevant Executive Director in consultation with the Assistant Chief Executive (Finance, Property and Information Services) and are carried out in accordance with the Law;
 - (b) Conducted by a team of suitably experienced officers approved by the relevant Executive Director and trained in post tender negotiations;
 - (c) Written records of the negotiations are kept and a clear written record of the added value obtained by the post tender negotiations is incorporated into the contract with the successful tenderer.

Further information is available on the Procurement intranet.

The above requirements apply equally to quotations.

15. Acceptance of Quotations/Tenders and Award

- 15.1 The Council is not bound to accept any quotation or tender and this must be made clear to bidders in writing at the beginning of the process and as appropriate throughout.
- 15.2 Quotations and tenders may be accepted on behalf of the Council by the relevant Executive Director provided they have been sought, evaluated and are to be awarded fully in compliance with these Rules and the necessary approval has been obtained.
- 15.3 In relation to all contracts once a decision to award a contract is made, all bidders must be notified at the same time, as soon as possible, in writing, of the intention to award the contract to the successful bidder, giving reasons for the decision. Please see the Procurement intranet for guidance.
- 15.4 For all contracts tendered in accordance with the EU procurement rules, a mandatory minimum standstill period must be observed between the decision to award being notified to all bidders and entering into a contractually binding agreement with the successful bidder. Please see Procurement intranet for guidance.
- 15.5 If an unsuccessful bidder challenges the decision to award the contract, if the contract has not already been awarded it shall not be awarded until the advice of the Assistant Chief Executive (Legal and Governance) has been obtained.
- 15.6 When a contract is awarded or a framework arrangement concluded, the relevant Executive Director must ensure that the award is published on the YORtender contract store which produces the Council's Contracts Register. In the exceptional case where YORtender has not been utilised, for example where there is a call-off from a Framework Agreement, the relevant Executive Director must ensure that the procurement team at NPS Barnsley are notified to enable the Council's Contract Register to be updated.
- 15.7 When the contract is awarded under the EU procurement rules the contract award notice must be transmitted to OJEU in accordance with the Public Contract Regulations 2006 (which at the date of these Rules require it to be done within 48 days).
- 15.8 Unsuccessful bidders may request a debrief which should be provided to them in writing. Further information is available on the Procurement intranet.

16. Contracts

- 16.1 Written contracts include the Council's electronic purchase orders in addition to contracts prepared and/or approved by the Council's Legal Services department. The relevant Executive Director must ensure that officers give proper consideration to the form of contract required in each case and obtain advice from the Assistant Chief Executive (Legal and Governance) (Legal Services) where necessary.
- 16.2 Every contract must be in writing and unless executed under the Council's seal:
- must be signed by two officers at least one of those officers shall be an Executive or Assistant Director where the contract value is up to and including £100,000.
 - must be signed by two Executive or Assistant Directors and at least one of those officers shall be the Assistant Chief Executive (Legal and Governance) or their authorised signatory where the contract value is over £100,000.
- 16.3 The relevant Executive Director must ensure that every contract in writing must set out:
- (a) the works, goods, services, materials, matters or things to be carried out or supplied;
 - (b) the price to be paid and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions;
 - (c) the time(s) within which the contract is to be performed; and
 - (d) such other matters as the Assistant Chief Executive (Legal and Governance) considers necessary.
- 16.4 Any standard terms and conditions of contract submitted by a supplier shall not be accepted without advice from the Assistant Chief Executive (Legal and Governance).
- 16.5 Every contract must be in writing and must be concluded (executed by all parties) prior to the commencement of any works, services or any supply. Exceptionally, and only for certain categories of procurement such as construction, a letter of intent may be utilised to enable forward planning and mobilisation activities. Proceeding under a letter of intent can give rise to risks and advice should always be sought from the Assistant Chief Executive (Legal and Governance) before utilising a letter of intent.

17. Variations

- 17.1 A variation must not materially affect or change the scope of the original contract. Such a variation could constitute a new award/contract. The EU procurement rules must be followed where applicable and advice obtained from Legal Services and the procurement team at NPS Barnsley. In other cases where a proposed variation exceeds 10% or £100,000, whichever is the lower then appropriate advice should be sought from the procurement team at NPS Barnsley and Legal Services.
- 17.2 The procurement team at NPS Barnsley should be notified of any contract variations so that the contracts register can be updated.

18. Performance of Contracts – Security

- 18.1 Sufficient security shall be taken for the due performance of every contract which exceeds £250,000 in amount or value. The Executive Director procuring the contract should consider the type of security required in the circumstances. This may include one or more of the following; a bond, deed of guarantee, liquidated damages and/or retention of payment. Guidance is available on the Procurement intranet.

APPENDIX 1

Reference: <i>(this will be provided by NPS Barnsley)</i>
Originator:
Tel:
E-mail:

REPORT OF: *[insert name of relevant Executive Director]*

DATE:

**SUBJECT: REQUEST TO WAIVE / APPLY CONTRACT PROCEDURE RULES
IN RESPECT OF** *[insert name of project/procurement]*

1. BACKGROUND

[Explain the background circumstances which should include:

- *Name of Supplier(s)*
- *Contract Value(s)*
- *Contract Dates*

If an "in-house" provider is capable of providing the goods or undertaking the required works or services, the report should detail whether they have been contacted to ascertain their willingness to provide the goods/works/services.]

2. REASON FOR REQUEST AND RECOMMENDED COURSE OF ACTION

[The report must give the reasons why the request is being made and explain the recommended course of action. Sufficient information must be included to enable the relevant people to make a decision.

For example;

Justification for using the supplier including details of previous contracts (dates, value and scope)

Information demonstrating that value for money is being achieved including any savings being secured by this approach

Identification of any social, economic or environmental advantages from this course of action.]

3. CONSEQUENCES IF THE PROPOSED ACTION IS NOT APPROVED

[A statement should be included explaining the consequences of the proposed action not being approved.]

4. LEGAL IMPLICATIONS

[A. Where the value of the contract is up to and including £100,000 and a waiver to Rule 3.2 is required (ED to obtain 3 quotes) there is no requirement to seek approval from the Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services). You should however consider the issues and if in doubt seek legal advice.] Include the following:

*The Council's Contract Procedure Rules allow in exceptional circumstances the appropriate Executive Director to make the decision to waive Contract Procedure Rule 3.2

OR

[B. Where the value of the contract is over £100,000 and a waiver to Rules 4.1/ 4.2/ 4.3, is required (inviting tenders) the Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services) will advise as to whether the proposed action would, or might, be held to contravene any enactment, rule of law or Directive of the EU]. A statement made by Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services) should be included in the report as follows:

The Assistant Chief Executive (Legal and Governance) has advised that it would be lawful for the Council to waive Contract Procedure Rules 4.1/4.2*/4.3* in these circumstances, provided that the Assistant Chief Executive (Finance, Property and Information Services) is satisfied that there are compelling reasons to do so.

OR

[C. Where in exceptional circumstances, an Executive Director requests to waive any Contract Procedure Rule, other than those referred to in A and B above, the approval of the Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services) should be obtained in accordance with Rule 1.12).] The following statement to be included;

*The Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services) have advised that in the circumstances waiver of Rule(s) *[insert rule(s)]* would be justified.

OR

[D. Where an Executive Director proposes to use the competitive negotiation procedure provided for by Rule 4.4 the approval of the Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance Property and Information Services) should be obtained in accordance with Rule 4.4 (b) and (c).] The following statement to be included;

*The Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services) have advised that in the circumstances use of the competitive negotiation procedure is justified.

OR

[E. Where a procurement must follow one of the award procedures set out in the Public Contract Regulations 2006 and the relevant Executive Director proposes to use the negotiated procedure, in accordance with Rule 7.6 the approval of the Assistant Chief Executives (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services) should be obtained.] Include the following statement;

*The Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services) have advised that in the circumstances use of the negotiated procedure pursuant to the Public Contracts Regulations 2006 is justified.

*Delete/include as appropriate

5. RECOMMENDATION *[include recommendation A, B, C,D or E as appropriate]*

[A. Where the value of the contract is up to and including £100,000 and a waiver of Rule 3.2 is required.]

*A) It is recommended that approval is given, by the Executive Director, to waive Contract Procedure Rule 3.2 (Executive Director must invite at least 3 quotations) and to proceed as proposed in the report.

OR

[B. Where the value of the contract is over £100,000 and a waiver of Rules 4.1,4.2 and 4.3 is required.]

*B) It is recommended that approval is given, by the Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services) to waive Contract Procedure Rules 4.1, 4.2 and 4.3 (inviting tenders) and to proceed as proposed in the report.

OR

[C. Where a waiver is sought as provided for in Rule 1.12]

*C) It is recommended that approval is given, by the Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services) to waive Contract Procedure Rule (s) *[specify which particular Rule(s) not covered by either A or B above]* and to proceed as proposed in the report.

OR

[D. Where use of a competitive negotiation procedure, as provided for in Rule 4.4, is proposed]

*D) It is recommended that approval is given, by the Assistant Chief Executive (Legal and Governance) and Assistant Chief Executive (Finance, Property and Information Services) to utilise a competitive negotiation procedure as provided for in Contract Procedure Rule 4.4 and to proceed as proposed in this report.

OR

[E. As required by Rule 7.6, Where use of a negotiated procedure as provided for in the Public Contracts Regulations 2006 is proposed].

*E) It is recommended that approval is given, by the Assistant Chief Executive (Legal and Governance) and the Assistant Chief Executive (Finance, Property and Information Services) to utilise a negotiated procedure as provided for in the Public Contract Regulations 2006 and to proceed as proposed in this report.

**Delete/include as appropriate*

**SUBJECT: REQUEST TO WAIVE/APPLY CONTRACT PROCEDURE RULES
IN RESPECT OF *[insert name of project / procurement]***

Based on the information / reasons detailed above, the request to waive or apply the Contract Procedure Rules set out and proceed as proposed in the report, is approved.

Signed.....

Executive Director of *[insert relevant department]*

Date:

Comments:

If recommendations B, C, D or E are proposed then approval from the following will also be required:

Signed.....

On behalf of the Assistant Chief Executive (Legal and Governance)

Date:

Comments:

Signed.....
Recommended for signature to the Assistant Chief Executive (Finance,
Property and Information Services) by the Director of Design and
Procurement, NPS Barnsley Ltd
Date:
Comments:

Signed.....
On behalf of the Assistant Chief Executive (Finance, Property and Information
Services)
Date:
Comments:

Signed.....
Partnership & Shared Services Manager, Strategic Property and Procurement
Date:
Comments:

(Where the proposed action involves the award of a contract directly to NPS
Barnsley Ltd without competition approval should be obtained from the
Partnership & Shared Services Manager, Strategic Property and
Procurement.)