

BARNSELY METROPOLITAN BOROUGH COUNCIL

CONTRACT PROCEDURE RULES

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DEFINITIONS

Accountable Body:	means where the Council is the lead body for another public body.
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).
Barnsley Norse:	means Barnsley Norse Limited.
Category Manager:	means the officer designated as Category Manager for a key area of spend.
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'.
Contracts Finder	means the web-based procurement portal provided by or on behalf of the Cabinet Office.
DPS	means Dynamic Purchasing System (DPS) is a framework agreement where new suppliers can join at any time and it is to be run as a completely electronic process.
EU Treaties	means the Treaty on European Union and the Treaty on the Functioning of the European Union.
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 Strategic Procurement Intranet Site.

Gateway Approach	means a process where a procurement project has check off stages which require approval to ensure a procurement project is progressing correctly.
General Data Protection Regulations 2018 (GDPR)	The General Data Protection Regulation 2018 are regulations which govern the rules on data protection and privacy for data on individuals should be managed
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.
Light Touch Services:	means the social and other specific services listed in schedule 3 to the Regulations.
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.
Procurement Team:	means the Head of Strategic Procurement or person nominated by them.
Records Retention Policy:	means the Council's Record Retention Policy located on the intranet within the Records Management Section (Retention Guidelines).
Regulations:	means the Public Contracts Regulations 2015,
Rule(s):	means these Contract Procedure Rules.
Small, Medium Enterprise (SME)	means a company with a limited number of employees and turnover.

Social Value	means the requirement to consider social, economic and environmental benefits through procurement.
Voluntary Sector Organisation (VSO)	means not for profit organisation that has social objectives as it purpose for existence.
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 maintained schools and circumstances when the Council is the Accountable Body. They aim to ensure a system of openness, fairness, and transparency 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 Commercial Strategy and the [guidance](#) available on the Strategic Procurement Intranet Site.
- 1.3 All Council procurements and contracts must comply with UK legislation, EU procurement rules and the General Data Protection Regulation 2018 and, in respect of any EU Legislation with direct effect in the United Kingdom prior to 29 March 2019, any consolidation or restatement of the same into UK law as a result of the United Kingdom exiting the European Union, 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. It should be noted that agreements with other public bodies and with Council-owned companies may also be subject to these regulations, and advice should be sought from the Strategic Procurement Team and the Service Director, Legal Services.
- 1.4 These Rules do not apply to:
 - (a) contracts of employment which makes 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) contracts where there is an urgent requirement to obtain specialist skills on a short term basis which are not currently available in the Council's structure, where the total value of this requirement is below £70,000, and which cannot be sourced via the Corporate temporary recruitment contract.
 - (c) 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.
(unless the use of land is for development purposes)

- 1.5 All values stated in these Rules are exclusive of VAT unless otherwise stated and are aggregated values of the total value of a specific good, service or works procured by the Council.

Total values shall not be disaggregated specifically to avoid competition or a specific type of competition.

- 1.6 All Executive Directors are responsible for ensuring officers within their directorate comply with these Rules.
- 1.7 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, evaluation, award and management of contracts. The Council's Anti-Fraud, Corruption Policy and [Code of Conduct](#) must be complied with.
- 1.8 Any difference of opinion regarding the meaning of these Rules shall be resolved by the Executive Director, Core Services.
- 1.9 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 and uploaded to the project on YORTender.
- 1.10 These Rules shall be reviewed annually by the Executive Director, Core Services in consultation with the Council's Strategic Procurement Team and other key officers.

PRE-PROCUREMENT REQUIREMENTS

2. External Grant Funded Procurements

- 2.1 The purchase of goods, works and services in grant funded projects are subject to rigorous audits to confirm that processes complied with Public Procurement Law and the conditions of the grant in which the funding was given. Examples of grant funding are the European Structural and Investment Fund (ESIF) which includes European Regional Development Fund (ERDF) and the European Social Fund (ESF) in England, Joint European Support for Sustainable Investment in City Areas (JESSICA).
- 2.2 Failures by grant recipients to comply with Public Procurement Law and the conditions of the grant funding can lead to the claw back of funding. Depending upon the characteristics of the breach, this could be up to 100% of the grant.
- 2.3 There are separate penalties for breaches of the Public Procurement Law.
- 2.4 Where funding is sought to fund a procurement project no part of Barnsley Council should apply for the funding unless it has been fully considered and planned how it will be able to demonstrate compliance with Public Procurement Law, and the terms and conditions of the funding.
- 2.5 Information on procurement rules for ESIF funded projects is given at: <https://www.gov.uk/government/publications/european-structural-and-investment-funds-procurement-documents>

3. Existing Arrangements

- 3.1 Before commencing any procurement process the following must be considered.

- (a) In-house Providers

Subject to the exceptions in relation to procurement by Area Councils (see Rule 4), 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 Service 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/Service 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.
- (iii) For property related services provided by NPS Barnsley and facilities management contract 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 Procurement Team should be contacted with any queries officers may have in relation to this.
- (iv) Where Rule 3.1 (a)(iii) does not apply, for the purposes of Rule 3.1 (a) (i) and (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.
- (v) If the Executive Director referred to in 3.1 (a) decides to proceed in accordance with Rule 3.1 (c) 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 3.1. All other Rules shall apply where applicable.
- (vi) 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

goods, services or works which the Executive Director intends to submit.

There is no obligation on the part of the Council to order any supplies, services or work from the supplier/sub-contractor or any other supplier/sub-contractor.

- (vii) All such bids will be treated as confidential and will not be used other than for the purposes for which they are sought.
- (viii) A list of in-house services is available on the [Strategic Procurement Intranet Site](#).

(b) Corporate Contracts

Where a corporate or framework contract is in place with a supplier, this should be utilised rather than sourcing alternative providers.

(c) Collaborative Procurement Arrangements

- (i) 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 frameworks available through a public service purchasing consortium.
- (ii) 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 and the Strategic Procurement Team should be contacted for advice in connection with this process.

3.2 The rules below set out what should be considered before undertaking any procurement activity. Prior to undertaking procurement activity officers must ensure that:

- (a) 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 Strategic Procurement Intranet Site.

- (b) [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 Strategic Procurement Intranet Site. 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 two or more separate contracts in an attempt to avoid these Rules or the EU procurement rules.
- (c) Officers must ensure that they have obtained the necessary approval(s) to authorise the expenditure, procurement or sale of goods, works or services in accordance with the Council's constitution. (The approval of an Executive Director, or Cabinet Spokesperson, or Cabinet, or Council whichever is required in accordance with the Council's Constitution). In addition, a business case must be prepared and approved by the relevant officer(s) for all procurement above £50K.
- (d) the Council's requirements are clearly documented. 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.
- (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 where there is an economic or social value to the council resulting from the lotting.
- (f) they are satisfied that 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 £70k a Procurement Event Approval Document (PEAD) process advised by the Strategic Procurement Team, shall be used as a gateway approach.
- (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) with the exception of procurement by Area Councils (see Rule 4) existing arrangements are considered and utilised where appropriate and after taking advice in accordance with 3.1 (a) above, such as in-house providers, corporate contracts, existing collaborative procurement arrangements and Approved Lists.
- (k) 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 Strategic Procurement Intranet Site.
- (l) taking all necessary advice, the procurement is properly categorised for the purpose of the Regulations, including whether as works, supplies or services, and that any Light Touch Services are correctly identified.
- (m) Before quotations/tenders are invited, the award criteria must be recorded in writing, including the basis for assessing price or cost, any quality criteria and all weightings. 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 Strategic Procurement Intranet Site.

The Procurement Event Approval Document (stage three-Procurement Strategy) must include the following for all procurements above £70k:

- The Price / Quality split
- The reasons for the Price / Quality split

4. Procurement by Area Councils

- 4.1 The objective of procurement from the Area Councils' commissioning budget is to meet area priorities through contracting with local businesses and voluntary organisations in order to support market development and growth in that sector. Any activity will seek to maximise social value and local content.
- 4.2 Accordingly, Rule 3.1 will not generally apply in the case of procurement from the Area Councils' commissioning budget. However, the Service Director for Stronger, Safer and Healthier Communities shall liaise with Service Directors across the Council at the appropriate time in the commissioning cycle to discuss the commissioning intentions of Area Councils and areas of potential tension and opportunity.
- 4.3 Where the estimated value of the contract is less than £70,000 and there are sufficient and capable organisations with a presence in the local economy, only those organisations will be invited to tender. In exceptional cases only, where there are no such organisations, the Service Director for Stronger, Safer and Healthier Communities may, at their discretion, invite the relevant in-house service to tender, subject to maximising the local contribution to the supply chain.
- 4.4 Where the estimated value of the contract is £70,000 or more, but not in excess of the relevant EU threshold defined in Rule 8.9, the Service Director for Stronger, Safer and Healthier Communities will invite the relevant in-house service to tender only if there are insufficient local business and voluntary organisations in the local economy. Otherwise, the in-house service will not tender.
- 4.5 Normal contract procedure rules will apply for contracts at or in excess of the relevant EU threshold

5. IT Procurement

- 5.1 The Service Director of IT must approve any new or renewal of a proposed contract for software and/or hardware.
- 5.2 In accordance with Council's Financial Regulations, all IT related procurements must have full engagement via their Business Relationship Manager when requiring new, changes to or retirement of any IT systems, software, services or hardware. The procurement and the contract management under £70K will be managed by the IT Contracts and Commissioning Team.

6. Performance of Contracts – Security

- 6.1 Executive Directors must consider any steps necessary to protect the Council's interests in the event of contractor default, having regard to advice from the Service Directors, Finance and Legal Services.
- 6.2 This consideration should be based on risk to the Council, taking account of the circumstances, including:
- (a) the value of the Contract;
 - (b) the type of Goods, Services or Works being procured;
 - (c) the payment profile of the Contract;
 - (d) the financial strength of the suppliers in the market;
 - (e) affordability and proportionality;

and should assess whether additional security is required in the form of a bond, guarantee, retention, or (where performance is required by a particular date, and where delay would have financial consequences for the Council) provision for liquidated damages.

7. Nominated/Named Sub-Contractors and Suppliers

- 7.1 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.
- 7.2 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.

PROCUREMENT PROCESS

8. General Rules Relating to Procurement

- 8.1 There is guidance available on the Strategic Procurement Intranet Site in relation to all procurement procedures.

The procurement [Aide Memoire](#) is a summary of the tasks to be performed to ensure a complaint procurement.

- 8.2 For all contracts above £50,000 YORtender must be used to undertake a competitive exercise. For any contracts £5,000 and above then a record must be published to the Contract Register in YORtender.
- 8.3 Consideration should be given in all cases as to whether wider, additional advertisement is necessary to identify appropriate potential suppliers, for example, specialist/trade journals.
- 8.4 Where an additional advertisement is placed or where there is an open invitation on YORtender, an advertisement must also be placed on Contracts Finder for any contract over £25,000.
- 8.5 Where the Regulations apply (Refer to Clause 8.10), 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.
- 8.6 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 via Yortender. Any response from the Council to bidders should also be in writing via Yortender. There are rules that must be followed to ensure fairness and transparency during these clarification phases and details can be found on the Strategic Procurement Intranet Site.

The main procurement routes for competition are detailed below:

8.7 Contracts up to and including £50,000

For contracts valued up to and including £50,000 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.

8.8 Contracts between £50,001 and up to and including £70,000

- (a) For contracts above £50,000 and up to and including £70,000 the Executive Director must seek to achieve competition and for that purpose invite at least three quotations via YORtender. Where appropriate at least two of the companies invited to quote should be local businesses. In instances where only a single bid is received, then guidance should be sought from the Strategic Procurement Team.

- (b) When inviting suppliers to quote, the officer responsible should ensure they rotate between suppliers where the market permits and allows to ensure a fair, open and transparent process is applied.

8.9 Contracts between £70,001 and up to the OJEU thresholds for goods and services

- (a) All procurement above £70,000 in total contract value must be undertaken by the Strategic Procurement Team.
- (b) For procurements above £70,000 to the EU threshold for goods and services, an open tender procedure must be followed. This is a one stage procurement advertised openly without a shortlisting stage. Service-specific questions are permitted but must be relevant to the subject matter of the procurement and proportionate.
- (c) Using an open procedure the contract is advertised and suppliers invited to submit a tender by a certain date (being not less than 14 calendar days from the date of the notice). In respect of procurement by Area Councils, this should be no less than 28 days to give adequate opportunity for SMEs and VCS organisations to tender.

8.10 Contracts above OJEU threshold

- (a) Where a contract is estimated to be equal to or exceeds the relevant threshold the Regulations shall apply:

The regulation thresholds at 1 January 2022 **inclusive of VAT** are:

- Supplies and Services - £ 213,477
- Works - £ 5,336,937
- Light Touch Services - £ 663,540

The thresholds change every two years and are scheduled to change again on 1 January 2024. The Strategic Procurement Intranet Site 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 Strategic Procurement Team.

- (b) Publication of all OJEU notices will be performed by a member of the Strategic Procurement Team. A contract notice in the prescribed form shall be published in the OJEU in order to invite tenders or expressions of interest.

- (c) For above OJEU thresholds the following procedures can be used:

Open Procedure

Refer to Clause 8.9 (b) and (c) for requirements.

8.11 Restricted Procedure

A restricted procedure may only be used for contracts above the Regulation threshold for Goods and Services and not for any other contracts below the relevant Regulation threshold.

The requirement of an OJEU notice must be published stating the restricted process will be utilised.

Under the restricted procedure, potential suppliers are invited to apply within the period of advertising by the completion of the Standard Selection Questionnaire (SQ). Any service-specific questions entered within Section 3 of the Standard Selection Questionnaire (or PAS 91 for work contract- section) must be relevant to the subject matter of the procurement and proportionate.

Following an assessment of the SQ at least 5 suppliers (where there are 5 or more who meet the requirements and are absent of any grounds for exclusion) should be selected to receive an invitation to tender.

In the event that the 5 suppliers selected does not include at least two suppliers that are considered local, up to two additional suppliers 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 met the requirement and are absent of any grounds for exclusion, all those who have applied 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 Strategic Procurement Team.

8.12 Light Touch Services

All light touch services are identified in Schedule 3 of the Public Contract Regulations 2015.

The procurement must adhere to the three principles of openness, fairness and transparency and be in compliance with the Regulations (Regulation 74 to 76 specifically).

Light touch services and all contract awards of such services above the OJEU threshold must be advertised in the Official Journal of the European Union.

This procedure shall only be performed by the Strategic Procurement Team

8.13 Competitive Procedure with Negotiation

The competitive procedure with negotiation process should only be used for contracts for goods, services and works above the Regulation threshold and in exceptional cases where specialist requirements justify the process below the Regulation threshold.

Using the competitive procedure with negotiation, potential suppliers are invited to express an interest in tendering, within such period as may be specified, through pre-qualification stage. Following an assessment of the expressions of interest, a minimum number of suppliers should be selected to receive an invitation to tender which should incorporate a negotiation stage. A minimum of 3 suppliers must be invited to negotiate unless fewer candidates have met the selection criteria and these are sufficient to ensure genuine competition. The invitation to tender documents should stipulate how the negotiation stage will be managed.

The procedure should shall only be performed by the Strategic Procurement Team

8.14 Competitive Dialogue/ Innovation Partnership.

Using competitive dialogue, a contracting authority enters into a dialogue with bidders about its requirements before inviting them to submit a final tender. It is used in complex projects where the contracting authority cannot be adequately specify its requirements.

The innovation partnership is a procedure designed to allow contracting authorities to establish a long-term partnership for the development and subsequent purchase of a new, innovative product, service or works. They are intended to be long term partnerships which allow for both the development and subsequent purchase of new and innovative products, services or works. The term "partnerships" is not used in a technical sense to mean legal partnerships as defined under UK law;

rather, the term is used to indicate the partnering type approach to working together.

This procedure shall only be performed by the Strategic Procurement Team in partnership with legal services.

9. Frameworks/Dynamic Purchasing System

9.1 Where it is considered that the utilisation of an existing Framework Agreement of another public body is the most appropriate means to meet the Council's requirements, this must be discussed with the Strategic Procurement Team. The Council may need to complete an access agreement prior to utilisation of the framework.

Where such relevant Framework Agreements contain a number of different contractors able to provide goods/services a mini competition between all contractors or a direct call off (where permissible) should be undertaken.

9.2 Framework Agreements / Dynamic Purchasing Systems shall be procured in accordance with these Rules and the Regulations and where the relevant EU thresholds apply. Procedures described by the Regulations shall apply to all aspects of the procurement and operation of the Framework Agreement / Dynamic Purchasing System including:-

- the procurement methodology;
- any orders placed under the Framework Agreement;/Dynamic purchasing system.
- re-opening of competition or call off competition between all contractors/suppliers on the Framework/Dynamic Purchasing System.
- the duration of a Framework / Agreement (which shall not normally exceed 4 years) / or the Dynamic Purchasing System (As the period stated in the tender documents).

9.3 All call offs / mini competitions from framework agreements must be performed on Yortender.

10. Exceptions to Requirements of Competition (where the Regulations do not apply)

10.1 Where the Regulations apply they must be complied with. Further advice and guidance can be sought on the [Strategic Procurement Intranet Site](#).

- 10.2 For contracts above £50,000 and up to and including £70,000 in exceptional circumstances and considering all the information available an Executive or Service Director may decide that it is justified to invite less than three quotations in a particular instance or type of transaction.

The relevant Executive or Service Director shall ensure the goods/services and/ or works to be procured subject to the waiver to competition have a fully detailed specification and the Council terms and conditions agreed with the supplier.

The relevant Executive Director must explain their reasons for this by completing the [Waiver to Competition Form](#) ensuring the form is signed, an electronic version saved (PDF format and a copy sent to the Strategic Procurement Team for a waiver reference number) and uploaded onto the project file on YORtender.

- 10.3 For contracts above £70,000 (not covered by Rule 10.1 above) Rules 8.8 to 8.14 shall not apply where in accordance with the procedure set out in Rule 10.6 (a), (b), (c) and (d) below the relevant Executive Director has obtained the approval of the Strategic Head of Procurement and Service Directors of both Legal and Financial Services (S151 Officer) to waive Rule 8.8 to 8.14 allow an exception to the requirement of competition.
- 10.4 The relevant Executive Director shall prepare a waiver report in the form set out in the Waiver to Competition Form explaining the proposed course of action and the reasons why a waiver to Rule 8.8 to 8.14 is required (see Rule 10.6 below).

The report must be submitted to in the following order:

- Head of Strategic Procurement
- Service Director, Legal Services
- Finance Business Unit (S151 Officer)
- Executive Director of the relevant directorate

Approval and/or comments shall be provided in the format set out in the Waiver to Competition Form. The relevant Executive Director must ensure an electronic version of the report and approval is saved (PDF format) and uploaded into the project file on YORtender.

- 10.5 The procedure set out in Rule 10.4 above is in addition to any other approval that is required, for example to incur the expenditure for the duration of the contract, in accordance with the Council's Constitution.

10.6 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 commercial strategy and policies.

(a) No Available Competition

The relevant Executive Director must state the reason for the waiver is due to no available competition.

This can occur in a limited number of circumstances as in the following:-

1. The purchase of proprietary or patented goods or materials only from one firm, and where no equivalent or no reasonably satisfactory alternative is available;
2. The execution of works or supply of services of a specialised nature which can only be carried out by only one firm and where no equivalent or no reasonably satisfactory alternative is available;
3. The purchase of a named product required to be compatible with an existing installation for which no equivalent or no reasonably satisfactory alternative is available;
4. The appointment of a developer to exercise functions of the Council under Section 278 of the Highways Act 1980;
5. The instruction of, advice from, or service provided by Counsel.

(b) Variation

The relevant Executive Director can order additional works under a waiver in the following circumstance:

Additional works, services or supplies are required to the original contracts that are within the original scope, provided the overall value is not greater than 50% of the original contract.

(c) Emergency Circumstances

Where purchases for works and services are required by the appropriate Executive Director urgently, due to circumstances not

foreseeable and not attributable to the Council, as not to permit compliance with the requirements of competition.

(d) Strategic/Tactical Procurement

Where the Head of Strategic Procurement and the relevant Executive Director consider a waiver to competition for the following reasons:-

Aggregating different contracts together but an extension is required to align contract start dates.

Due to shortage of resources to enable procurement event to be properly project managed which could not have been foreseen or managed.

10.7 The Strategic Procurement Team shall maintain a register of all such exceptions.

10.8 In compliance with the Local Government Transparency Code, all contracts created after a waiver to competition has been approved must be promoted to the Council's Contracts Register. In addition, all contracts awarded above £25,000 must have a contract award notice publicised on Contracts Finder.

11. Submission and Opening of Quotations and Tenders

11.1 Contracts up to and including £50,000

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.

11.2 Contracts above £50,000

YORTender must be used for the return / submission of quotations and tenders in accordance with the system's requirements.

11.3 The opening and release of submitted bids (after the specified deadline) must be performed on Yortender:

(a) Quotations above £50,000 and up to and including £70,000 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 releasing the quotation must not have been involved in the preparation of the in-house bid.

- (b) Tenders above £70,000 shall be opened and released at the same time by a representative of the relevant Executive Director and a representative of the Strategic Procurement Team. Where in-house bids are involved, the representatives releasing the tenders on Yortender must not have been involved in the preparation of the in-house bid.

11.4 Late Quotations/Tenders

Late bids may only be accepted with the approval of the Service Director, Legal Services 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.

EVALUATION OF QUOTATIONS/TENDERS

12. Evaluation of Quotations and Tenders

- 12.1 Evaluation of quotations/tenders must be completed in accordance with criteria and the scoring methodology set out in the quotation/ tender documents provided to suppliers to ensure the process is performed in open, fair and transparent manner.
- 12.2 Each member of the evaluation team for procurement above £70,000 must complete and sign a Declaration Form to state whether they have a vested interest in or links to, any potential supplier who has submitted a bid. It is the responsibility of the Strategic Procurement Team to manage this process by ensuring the forms are completed by all members of the evaluation team at the start of the process and recorded for audit purposes. Where there is a conflict of interest (COI) involved, the Strategic Procurement Team must consider the declared COI and manage this appropriately. If a COI is declared by a member of the evaluation panel, then this person/persons must be excluded from the evaluation panel to avoid exposing the Council to any commercial risk i.e. supplier challenge.
- 12.3 Records should be kept of the evaluation process, for example, criteria, sub-criteria, weightings, individual and consensus scoring including completed moderation forms (signed by the individuals involved in the evaluation) clarifications and reasons for decisions. Records should be

saved electronically (PDF format) and stored on YORtender and in accordance with the Council's Records Retention Policy.

12.4 Following the receipt of bids the Council has the opportunity, if necessary, to request in writing via YORtender, clarification of any aspect of a bid and any response from bidders should also be in writing via YORtender. This should only be performed where an obvious error has been made and does not allow a bidder to add or improve their bid.

12.5 Where the total value of a contract is higher than the budgeted value, additional approval from the budget holder must be obtained prior to proceeding with a contract award.

Please refer to the Strategic Procurement Intranet Site for further guidance.

13. Errors in Quotations/Tenders

13.1 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 the Strategic Procurement Team and/or Legal Services.

14. Abnormally Low Tenders

14.1 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 from the Head of Strategic Procurement and the Service Directors of Legal Services and Finance Business Unit (S151 Officer).

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

15.1 Where the Regulations apply they must be followed. Post tender negotiations are not allowed in OJEU procurement processes unless the competitive process with negotiation with tender procedure is used.

15.2 Where the Regulations 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.

15.3 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 Service Director Finance Unit (S151 Officer) and the Service Director, Legal Services 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.

The above requirements apply equally to procurements below £70k

16. Acceptance of Quotations/Tenders and Award

- 16.1 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.
- 16.2 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.
- 16.3 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 via Yortender, of the intention to award the contract to the successful bidder, giving reasons for the decision. Please see the Strategic Procurement Intranet Site for guidance.
- 16.4 For all contracts tendered in accordance with the Regulations, a mandatory 10 day 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 Strategic Procurement Intranet Site for guidance.
- 16.5 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 Service Director, Legal Services has been obtained.
- 16.6 Unsuccessful bidders may request a debrief which should be provided to them in writing. Further information is available on the Strategic Procurement Intranet Site.

17. Contracts Register and Contract Award Notices

- 17.1 All contracts above £5,000 must be promoted to the contract register on Yortender.
- 17.2 Where a contract has been tendered pursuant to the Regulations, the Council shall publish a contract award notice in OJEU no later than 30 days after the date of award of the contract and BEFORE any other award notice is publicised.
- 17.3 Where a contract has been awarded valued £25,000 or greater, regardless of the procedure used (including call-off from Framework Agreements), details of the award must be published on Contracts Finder, within 30 days of the award of the contract.

CONTRACT FORMALITIES

18. Contracts

- 18.1 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 Service Director of Legal Services where necessary.
- 18.2 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 Service Director where the contract value is up to and including £70,000
 - must be signed by two Executive or Service Directors and at least one of those officers shall be the Service Director, Legal Services or their authorised signatory where the contract value is over £70,000
- 18.3 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 Service Director, Legal Services considers necessary.
- 18.4 Any standard terms and conditions of contract submitted by a supplier shall not be accepted without advice or review from the Executive Director, Core Services.
- 18.5 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 but must be value capped and time

limited. Proceeding under a letter of intent can give rise to risks and advice should always be sought from the Service Director, Legal Services before utilising a letter of intent.

CONTRACT MANAGEMENT

19. Contract Management

- 19.1 All contracts must be managed in accordance with the Council's contract management procedures.
- 19.2 The Strategic Contract Manager in the Strategic Procurement Team should be contacted in regards to any contractual management issues.

20. Variations

- 20.1 A variation must not materially affect or change the scope of the original contract. Such a variation could constitute a new award/contract. The Regulations must be followed where applicable and advice obtained from Legal Services and the Strategic Procurement Team. In other cases where a proposed variation exceeds 50% or £100,000, whichever is the lower then appropriate advice should be sought from the Strategic Procurement Team in the first instance and Legal Services.
- 20.2 The Strategic Procurement Team should be notified of any contract variations that materially change the original scope and value of the contract.

All variations to a contract must be recorded and signed by both parties (including numbering and dated) and provided to the contractor to ensure a full audit trail is maintained.