

BARNSLEY METROPOLITAN BOROUGH COUNCIL

CONTRACT PROCEDURE RULES

2021/22 Revision

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DEFINITIONS

Accountable Body:	means where the Council is the lead body for another public body
Barnsley Norse:	means Barnsley Norse Limited
Berneslai Homes:	means Berneslai Homes Ltd, the Council's arms length management organisation of it's social housing stock
Concession Contract:	means a contract for pecuniary interest concluded in writing between a contracting authority and an economic operator(s); where the consideration (or 'payment') is either: - simply that the contractor has the right to exploit (that is, to profit from) the works/services that are the subject of the contract, or - where the contractor has that right together with some payment from the contracting authority
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. This is a framework agreement where new suppliers can apply to 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
FTS:	means the Find a Tender Service

Framework Agreement:	means an agreement, (usually with a maximum duration of up to 4 years), 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
Grant Agreement:	means an agreement whereby the Council provides monies to an individual or an organisation for a defined purpose, e.g. to provide a function or service without the expectation of any monetary benefit to the Council except the repayment of the monies
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 2016 (GDPR):	means the regulations which govern the rules on data protection and privacy for data on individuals should be managed
GPA	means the World Trade Organisation's Agreement on Government Procurement
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 a formal written contract for works described in the letter and asking the contractor to begin preparatory works the scope and extent of which (physical and financial) are outlined in the letter of intent 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 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'
Procurement Team:	means the Head of Strategic Procurement or person nominated by them
Public Procurement:	means public sector expenditure as defined by HM Government
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
Regulation Thresholds	means the values of a contract calculated in accordance with established GPA practice where procurement opportunities are subject to Public Contracts Regulations
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
State Aid:	means any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU)
Voluntary Sector Organisation (VSO):	means not for profit organisation that has social objectives as its purpose for existence
YORtender:	means the Council's electronic procurement system
Zero Carbon 40/45 Commitment:	means the Council's carbon reduction commitment for the Barnsley borough

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 [Code 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 Public Procurement Principles (equal treatment, transparency, non-discrimination and proportionality), the Government Procurement Agreement, and the Regulations, 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 and Contract Management 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) 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 Subject to [6.2\(c\)](#) below, all values stated in these Rules are exclusive of VAT 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 Management 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 and Contract Management team and other key officers.
- 1.11 These rules also apply to procurements undertaken by Berneslai Homes where funding is from the Housing Revenue Account.

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 did not infringe EU State Aid Law, 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 EU State Aid Law, 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 plus interest.

- 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 EU State Aid Law, Public Procurement Law, and the terms and conditions of the grant 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. Social Value/Inclusive Economy

- 3.1 Under the Public Services (Social Value) Act 2012, the Council is required to consider how goods, services and works, that it procures, improve the economic, social and environmental well-being of the Metropolitan Borough of Barnsley, and furthermore, that as a matter of procurement policy and practice, the Council requires any supplier, provider, consultant or contractor providing goods, services and works to the Council to use all reasonable endeavours to assist the Council to improve the economic, social and environmental well-being of the Borough.
- 3.2 All procurements regardless of value should consider social value / inclusive economy considerations in the requirements of the procurement.
- 3.3 It is a legal requirement for social value to be considered in FTS thresholds procurements and good practice to be considered below threshold. Reference should be made to the [Social Value Policy](#).
- 3.4 All social value outputs shall be recorded detailing the social value achieved including particular case studies. Reference shall be made to the Social Value guidance on the Strategic Procurement and Contract Management SharePoint [pages](#).

4. Zero Carbon 40/45 Commitment

- 4.1 All procurements regardless of value should consider the objectives of the councils [Energy Strategy](#) and where possible include actions that will assist in the delivery of the strategy.

Reference should be made to the Zero Carbon 40/45 commitment.

5. Conflict of Interest

- 5.1 Every procurement process must be free from any allegation of any conflict of interest from all those involved in any part of the process.
- 5.2 All participants in the procurement should sign a conflict of interest form. Any person who has a conflict of interest should record the conflict of interest on the Declaration of Interest form and not participate in the procurement process.

6. Existing Arrangements

- 6.1 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 10), 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 facilities management services provided by Barnsley Norse included in the Service Agreement, the Council

should offer the work to Barnsley Norse, unless this is inappropriate considering the provisions of that Service Agreement. The Council's Strategic Procurement and Contract Management team should be contacted with any queries officers may have in relation to this.

- (iv) if the Executive Director referred to in 6.1(a) decides to proceed in accordance with Rule 6.1(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 6.1. All other Rules shall apply where applicable.
- (v) 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) where services are provided by in house service to other Council departments then a service level agreement between the two parties is required, detailing as a minimum:
 - The service to be provided
 - The charge to be made
 - Time period the service will be provided
 - Roles and responsibilities involved in providing the service

(b) Corporate Contracts

- (i) 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 and Contract Management team should be contacted for advice in connection with this process.

6.2 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 public procurement rules (irrespective of whether they apply) as explained in [Estimating Contract Value](#) guidance. 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 Public Contract Regulations.
- (c) the value of contracts is to be estimated inclusive of VAT only for the purposes of applying the Regulation Thresholds and determining where Contracts Finder Notices are required.

- (d) 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 £20,000.

the Council's requirements are clearly documented. In the form of a specification and 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 part of the contract documentation.

- (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 £70,000 a Procurement Event Approval Document (PEAD) process advised by the Strategic Procurement and Contract Management 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 10) existing arrangements are considered and utilised where appropriate and after taking advice in accordance with 6.1 above, such as inhouse providers, corporate contracts and existing collaborative procurement arrangements.

- (k) an initial equality impact pre assessment check and an initial data protection impact assessment is carried out to ascertain whether a detailed [Data Protection Impact Assessment \(DPIA\)](#) or Equality Impact Assessment (EIA) is required to inform the procurement process and subsequent contract management phase. A link to the EIA toolkit can be found on the [Strategic Procurement Intranet Site](#). DPIA guidance can be obtained from Information Governance. The requirement to perform the pre assessment applies to all procurements regardless of value including below £20,000. Where the procurement is for Berneslai Homes the specific Berneslai Homes EIA and DPIA approvals process and templates agreed with Equalities and Information Governance will be followed.
- (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](#).
- (n) the Procurement Event Approval Document (stage three- Procurement Strategy) must include the following for all procurements above £70,000:
- the Price / Quality /Social Value split
 - the reasons for the Price / Quality / Social Value split

7. Pre-Market Engagement /Market Research

- 7.1 Pre-market Engagement/Market Research should be undertaken prior to any procurement to enable the following:
- an understanding of the markets ability to deliver
 - to enable feedback from the market on the proposed procurement methodology
 - raise awareness and gauge the level of interest of the procurement in the market

- To Understand the value of the contract being tendered to ensure the estimated contract value is accurate

8. Grants

8.1 Grants can be considered as a means of funding a third-party organisation to provide specialist services direct to service users or to obtain strategic services from a provider with the particular specialist skills but must not be used as an alternative to circumvent a competitive procurement process.

8.2 A designated officer should be appointed to manage the grant from conception to completion. The officer shall consult with Legal Services to ensure all the correct documentation in place to offer a grant.

The following should be considered as a minimum:

- the source of the funding, and compliance with terms and conditions of any external funding body
- State Aid compliance
- clear terms and conditions of grant between the Council and the recipient setting out:
 - a clear description of the scheme and the aims and objectives of the grant (the purpose)
 - a clear description of how money should be spent;
 - eligible expenditure terms, which prohibit improper expenses
 - data protection / equality issues
 - audit/ assurance
 - agreed outputs/ KPIs/ milestones/ longer term outcomes
 - financial and activity-based reporting and validation
 - payment suspension and claw-back and grant termination

8.3 All Grants shall be recorded on the Council's [Grant Register](#)

9. Concessions

9.1 Before any Concession Contract is commenced then a Business Case must be produced to demonstrate that a Concession Contract is appropriate and viable.

9.2 Advice on commercial arrangements and contract terms and conditions must be obtained from the Strategic Procurement and Contract Management team, Finance Service Director (151 Officer) and from Legal Services.

- 9.3 Advice from Legal Services must be sought prior to commencing any work on compiling a proposal or tender to determine if the Council has the power to enter into the contract.

10. Procurement by Area Councils

- 10.1 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.
- 10.2 Accordingly, Rule 6.1 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.
- 10.3 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.
- 10.4 Where the estimated value of the contract is £70,000 or more, but not in excess of the relevant FTS threshold defined in Rule 14.9, 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.
- 10.5 Normal contract procedure rules will apply for contracts at or in excess of the relevant FTS threshold.

11. IT Procurement

- 11.1 The Service Director of IT must approve any new or renewal of a proposed contract for software and/or hardware.
- 11.2 In accordance with Council's Financial Regulations, all IT related procurements must have full engagement via their IT Business Partner

when requiring new, changes to or retirement of any IT systems, software, services or hardware. All IT procurements under £70,000 will be managed by the IT Contracts and Commissioning Team and the team will manage all IT contracts of the Council.

12. Performance of Contracts – Security

12.1 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.

12.2 This consideration should be based on risk to the Council, taking account of the circumstances, including:

- the value of the Contract
- the type of Goods, Services or Works being procured
- the payment profile of the Contract
- the financial strength of the suppliers in the market
- affordability and proportionality

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

13. Nominated/Named Sub-Contractors and Suppliers

13.1 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.

13.2 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

14. General Rules Relating to Procurement

- 14.1 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 compliant procurement.

- 14.2 For all contracts above £20,000 YORtender must be used. For any contracts £5,000 and above then a record must be published to the [Contract Register](#).

- 14.3 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.

- 14.4 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 £20,000.

- 14.5 Where the Regulations apply (Refer to Rule 14.10), a contract notice must be published in the FTS **BEFORE** any other notice/advertisement is published and no other notice/advertisement should contain any more information than that published in the FTS.

- 14.6 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:

14.7 Contracts up to and including £20,000

For contracts valued up to and including £20,000 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 under the Council's social value policy.

All contracts with an aggregated contract value of £5,000 and above must be placed upon the Council's [Contract Register](#) in accordance with legislative requirements. This includes contracts created by a single quotation.

14.8 Contracts between £20,001 and up to and including £70,000

- (a) For contracts above £20,000 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 and Contract Management 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.

14.9 Contracts between £70,001 and up to the FTS thresholds for goods and services

- (a) All procurement above £70,000 in total contract value must be undertaken by the Strategic Procurement and Contract Management team.
- (b) For procurements above £70,000 to the FTS 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) When 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.

14.10 Contracts above FTS threshold

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

The Regulation Thresholds change every two years. The [Strategic Procurement intranet site](#) is kept up-to-date with details of the current thresholds and provides guidance on the Public procurement rules. Further help and guidance can be obtained by contacting the Strategic Procurement and Contract Management team.

- (b) Publication of all FTS notices will be performed by a member of the Strategic Procurement and Contract Management team. A contract notice in the prescribed form shall be published in the FTS in order to invite tenders or expressions of interest.
- (c) For above FTS thresholds the following procedures can be used:

14.11 Open Procedure

Refer to Rule 14.9 (b) and (c) for requirements.

14.12 Restricted Procedure

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

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

Under the restricted procedure, potential suppliers are invited to express their interest in taking part in a procurement competition by the completion of the Standard Selection Questionnaire (SSQ). Any service-specific questions entered within Part 3 of the Standard Selection Questionnaire (or PAS 91 for works contracts) must be relevant to the subject matter of the procurement and proportionate.

Following an assessment of the SSQ, 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 have applied and 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 Selection 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 bidders 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 and Contract Management team.

14.13 Light Touch Services

All Light Touch Services are identified in Schedule 3 of the Public Contract Regulations 2015.

The procurement must adhere to the Public Procurement Principles of equal treatment, transparency, non-discrimination and proportionality and be in compliance with the Regulations (Regulation 74 to 76 specifically).

Light Touch Services and all contract awards of such services above the FTS threshold must be advertised in the Find a Tender Service.

This procedure shall only be performed by the Strategic Procurement and Contract Management team.

14.14 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 a selection 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 shall only be performed by the Strategic Procurement and Contract Management team.

14.15 **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 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 and Contract Management team in partnership with legal services.

15. **Frameworks/Dynamic Purchasing System**

15.1 Where it is considered that the utilisation of an existing Framework Agreement, e.g. from Crown Commercial Services, another public body or a central purchasing organisation such as YPO, ESPO, NEPO etc. 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, unless there is a specific ability to make a direct award under the Framework Agreement or DPS a mini competition between all contractors should be undertaken.

15.2 Framework Agreements / Dynamic Purchasing Systems shall be procured in accordance with these Rules and the Regulations and where the relevant FTS 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)
- 15.3 All call offs / mini competitions from framework agreements must be performed on YORtender.

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

- 16.1 Where the Regulations apply they **must** be complied with. Further advice and guidance can be sought on the [Strategic Procurement intranet site](#).
- 16.2 Where the Regulations apply there is a requirement to publish a Voluntary ex ante Transparency (VEAT) notice if a contract is to be awarded without the prior publication of a contract notice. A VEAT notice **must** be published before a contract is awarded and a contract cannot be entered into until at least 10 days after the VEAT notice has been published. Guidance should be sought from Strategic Procurement and Contract Management.
- 16.3 Where an exemption to competition is sought, the Council's governance processes must be complied with, e.g. Equality Impact Assessment (EIA), Data Protection Impact Assessment (DPIA) and Officer Record Decision /Cabinet Report (where applicable).
- 16.4 For contracts above £20,000 and up to and including £70,000 in exceptional circumstances and considering all the information available an Executive Director may decide that it is justified to invite less than three quotations in a particular instance or type of transaction.

The relevant Executive 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](#) and send the completed form to procurement@barnsley.gov.uk for review. If, after review, the waiver can proceed then it can be progressed for signatures. Waivers under £70,000 **must** be reviewed and signed by the Head of Strategic Procurement and Contract Management prior to being signed by the relevant Executive Director.

The relevant Executive Director must ensure the signed form is sent electronically to the Strategic Procurement and Contract Management team for a waiver reference number and uploaded onto the project file on YORtender.

- 16.5 For contracts above £70,000 and not covered by the Regulations (Rule 16.1 above), if the relevant Executive Director is satisfied that an exception to competition is required due to reasons as set out in Rule 16.8 below, Rules 14.9 to 14.15 shall not apply, subject to obtaining the necessary approvals.
- 16.6 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 14.9 to 14.15 is required (see Rule 16.8 below). The form shall be sent to procurement@barnsley.gov.uk for review. If, after review, the waiver can proceed then it can be progressed for signatures.

The report must be submitted to in the following order:

- Head of Strategic Procurement & Contract Management
- Head of 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 is sent to procurement@barnsley.gov.uk for a waiver reference number and uploaded into the project file on YORtender.

- 16.7 The procedure set out in Rule 16.6 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.
- 16.8 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. All such applications for a waiver should be in accordance with the relevant provisions of the Regulations.

(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:

- the purchase of proprietary or patented goods or materials only from one firm, and where no equivalent or no reasonably satisfactory alternative is available
- 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
- 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
- the appointment of a developer to exercise functions of the Council under Section 278 of the Highways Act 1980
- the appointment of specialists on a short-term requirement to bridge a skills shortage in the Council's organisational structure
- the instruction of, advice from, or service provided by Counsel.

(b) Variation of a Contract During its Term

The relevant Executive Director may order additional works under a waiver in the following circumstance.

A waiver for a variation will not be required where additional works, services or supplies required to the original contracts are within the original scope and provided the overall value of all variations do not amount to greater than 50% of the original contract.

Where additional works required are greater than 50% of the original contract and if the additional works are not within the original scope regardless of value then a waiver will be required and advice must be sought from Strategic Procurement and Contract Management.

A [Procurement Event Approval Document – Variation](#) shall be completed for all variation on contracts above £70,000 to ensure that all due diligence checks are performed for compliance purposes and the sustainability of the 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 Contract Management 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 a procurement event to be properly project managed which could not have been foreseen or managed

16.9 The Strategic Procurement and Contract Management team shall maintain a register of all such exceptions.

16.10 In compliance with the Local Government Transparency Code, all contracts created by a waiver to competition must be promoted to the Council's [Contracts Register](#). In addition, all contracts awarded above £20,000 must have a contract award notice publicised on Contracts Finder.

17. Submission and Opening of Quotations and Tenders

17.1 Contracts up to and including £20,000

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.

All contracts with a value over £5,000 must be published on the Council's [Contracts Register](#) in accordance with the transparency code. The contract details should be entered via YORtender.

17.2 Contracts above £20,000

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

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

17.4 Late Shortlisting Submissions (SQs)/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. This rule also applies to shortlisting stages of a restricted process as well the tender return.

Bids submitted outside the YORtender system shall not be accepted.

EVALUATION OF QUOTATIONS/TENDERS

18. Evaluation of Quotations and Tenders

18.1 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.

18.2 Each member of the evaluation team for procurement above £70,000 must complete and sign a Declaration Form to state whether they have a conflict of interest in, or links to, any potential supplier who has submitted a bid. It is the responsibility of the Strategic Procurement and Contract Management 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 and Contract Management 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(s) must be excluded from the evaluation panel to avoid exposing the Council to any commercial risk, i.e. supplier challenge.

18.3 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.

- 18.4 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.
- 18.5 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.

- 18.6 Financial checks on all successful bidders should be performed and the detail of the check will vary on the risk involved to the Council and value of the contract. No tender should be accepted from a bidder who has been declared insolvent or bankrupt.

Where a minimal financial check is required then the Procuring Officer must be able to demonstrate that the risk to the Council from failure to deliver will have minimal repercussions and the awarded supplier is solvent.

19. Errors in Quotations/Tenders

- 19.1 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 and Contract Management Team and/or Legal Services.

20. Abnormally Low Tenders

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

- giving the bidder an opportunity to explain the tendered price (such explanation to be given in writing)
- considering the evidence provided, and demonstrating the bidder will not be able to provide the bid as detailed sustainably without detriment to the Council
- obtaining the written approval from the Head of Strategic Procurement and Contract Management and the Service Directors of Legal Services and Finance Business Unit (S151 Officer)

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

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

21.2 Where the Regulations do not apply then post tender negotiations will be only permissible where the tender procedure stated has allowed the use of such negotiations.

In exceptional circumstances, where the Service Director Legal Services considers that post tender negotiations are in the Council's interests and may achieve added value then post tender negotiations may be appropriate.

Post tender negotiations where permissible, 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.

21.3 Post tender negotiations with any bidders must be in accordance with the following conditions:

- (a) approved by the relevant Executive Director in consultation with the the Head of Strategic Procurement and Contract Management 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 bidder

22. Acceptance of Quotations/Tenders and Award

- 22.1 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.
- 22.2 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.
- 22.3 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.
- 22.4 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.
- 22.5 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.
- 22.6 Unsuccessful bidders may request a debrief which should be provided to them in writing. Further information is available on the [Strategic Procurement Intranet Site](#).
- 22.7 Due diligence should be performed on any potential suppliers before any award of a contract to ensure the supplier will be financially sound throughout the contract period. No contract should be awarded to a supplier who is subject to administration or winding procedures or has already been placed in administration. Advice can be sought from the Finance Service Director.

23. Contracts Register and Contract Award Notices

- 23.1 All contracts above £5,000 must be promoted to the Council's [contracts register](#) on YORtender. This includes contracts created by a single quotation.
- 23.2 Where a contract has been tendered pursuant to the Regulations, the Council shall publish a contract award notice in FTS no later than 30 days after the date of award of the contract and BEFORE any other award notice is publicised.
- 23.3 Where a contract has been awarded valued £20,000 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.

24. Record of all Procurement Documentation

- 24.1 A full audit trail of the whole procurement process including all internal documentation (e.g. business cases/Equality Impact Assessment/ Data Protection Impact Assessment) shall be maintained in the relevant tender file within the YORtender e-tendering system.

CONTRACT FORMALITIES

25. Contracts

- 25.1 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.
- 25.2 Every contract must be in writing and unless executed under the Council's seal:
- must be signed by an Executive and/or the Service Director and a person with the relevant delegated authority responsible for ongoing management of the contract, 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

25.3 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.

25.4 Any standard terms and conditions of contract submitted by a supplier shall not be accepted without advice or review from Legal Services.

25.5 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 set out the scope and extent of any preparatory works to be undertaken by the contractor, 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

26. Contract Management

26.1 All contracts must be managed in accordance with the Council's contract management procedures.

26.2 The Strategic Contract Management team should be contacted on contractmanagement@barnsley.gov.uk in regards to any contractual management issues.

27. Contract Variations

- 27.1 An existing contract may only be varied in accordance with Regulation 72 of the Regulations including where there are specific provisions provided for in the Contract. Funding must be identified before any variation is formally agreed. Modification of an existing Contract which will require the Council to provide additional funding is approved in accordance with the Council's Financial Regulation.

A variation not provided for in an existing Contract may be implemented subject to waiver in competition subject to clause 16.8 of these Rules and that it complies with clause 27.2

- 27.2 Where the Regulations apply there may be a requirement to publish a Modification Notice if a contract is to be varied in accordance with the provisions set out in Regulation 72. Guidance should be sought from Strategic Procurement and Contract Management.

- 27.3 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 and Contract Management team. Where a proposed variation exceeds 50% of the original contract value appropriate advice should be sought from the Strategic Procurement and Contract Management team in the first instance and Legal Services.

- 27.4 The Strategic Procurement and Contract Management 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.

- 27.5 For contracts above £70,000, all variations must be completed in accordance with the [Procurement Event Approval Document – Variations](#) to ensure that all due diligence checks are performed for compliance purposes and the sustainability of the contract

28. Contract Extensions

- 28.1 An existing contract may be extended in accordance with specific criteria as outlined in the Public Contract Regulations 2015, Regulation 72.

- 28.2 Contract extensions must not change the original scope of the contract. Advice should be sought from Strategic Procurement and Contract Management and Legal Services to ensure any extension proposed complies with procurement regulations.
- 28.3 An extension not provided within the existing contract will be subject to waiver to competition, as in Rule 16.
- 28.4 For contracts above £70,000, all contract extensions must be completed in accordance with the [Procurement Event Approval Document – Extension](#) to ensure that all due diligence checks are performed for compliance purposes and the sustainability of the contract.

29. Contract Novations

- 29.1 A contract should not be novated to another provider unless it complies with Regulation 72 of the Regulations.
- 29.2 Where the Regulations apply there may be a requirement to publish a Modification Notice if a contract is to be novated in accordance with the provisions set out in Regulation 72. Guidance should be sought from Strategic Procurement and Contract Management.
- 29.3 Legal Services must be consulted on all contract novations. Strategic Procurement and Contract Management and Legal Services must be consulted first on all contract novations.
- 29.4 Due diligence must be performed on all novations prior to any agreement to the novation to ensure the Council is protected.
- 29.5 For contracts above £70,000, all contract novations must be completed in accordance with the [Procurement Event Approval Document – Novation](#) to ensure that all due diligence checks are performed for compliance purposes and the sustainability of the contract.