

**BARNSELY METROPOLITAN BOROUGH COUNCIL**

**CONTRACT PROCEDURE RULES**

**September 2023 Revision 2**

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## **DEFINITIONS**

|                             |  |
|-----------------------------|--|
| Accountable Body:           | means where the Council is the lead body for another public body   |
| BEIS:                       | means the Department for Business, Energy & Industrial Strategy  |
| Berneslai Homes:            | means Berneslai Homes Ltd, the Council's LATC arms length management organisation of its social housing stock  |
| Best Value Form             | Document used as a record of Procuring Officer approach to achieving Value for Money. If a single quote is obtained Best Value (Single Quote), if a quote process is undertaken Best Vale Form (Quote Process)   |
| 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:<br>- 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<br>- 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'  |
| Contract Manager            | Officer responsible for management of a specific contract in line with defined Contract Management Plan  |
| Contract Management Plan    | Means a working document summarising all the practical details needed to efficiently manage contracts including objectives, milestones, roles and responsibilities, and key contacts   |
| Contract Management Toolkit | Documentation and guidance to support the management of a contract in line with the contract management plan   |

|                               |   |
|-------------------------------|---|
| 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   |
| 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.   |
| Grant Agreement:              | means an agreement whereby the Council provides monies to an individual or an organisation for a defined purpose, e.g. to deliver a project, provide a function or service without the expectation of any monetary benefit to the Council except the repayment of the monies if the funding terms are not complied with by the recipient. |
| Gateway Approach:             | means a process where a procurement project has review stages which require approval to ensure a procurement project is progressing correctly   |
| GPA                           | means the World Trade Organisation's Agreement on Government Procurement  |
| Housing Revenue Account (HRA) | the Council's ringfenced income and expenditure account for its own housing stock   |
| Key Performance Indicators    | means a quantifiable measure for performance over time for a specific objectives  |
| 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

Limited Company Means a company limited by shares or by guarantee

Local Authority Trading Company (LATC) Means a Limited Company which is wholly owned by BMBC or wholly owned by BMBC with other Public Bodies or is owned in the majority by Public Bodies with private enterprise(s) holding a minority interest for capital investment and control of the company lies with the Public Bodies as required under Regulation 12 of the Public Contract Regulations 2015

Member: means a Member of the Council also known as 'Councillor'

Procurement Team: means the Head of Strategic Purchasing, Procurement and Contract Management or person nominated by them

Public Procurement: means public sector expenditure as defined by HM Government

Procuring Officer Nominated officer of the Executive Director who is responsible and accountable for the procurement and alignment to these rules

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 the Regulations and as amended from time to time by legislation in accordance with established Government Procurement Agreement (GPA) practice where procurement opportunities are subject to the Regulations

Rule(s): means these Contract Procedure Rules.

|                                      |   |
|--------------------------------------|---|
| Senior Responsible Officer           | Means the Service Director or Executive Director with primary responsibility for the contract, is the primary risk owner, and is responsible for ensuring that the contract meets its objectives, delivers the required outcomes, and realises the required benefits.   |
| SharePoint                           | The Council's cloud-based storage site for documentation  |
| 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)   |
| Subsidy Advice Unit:                 | part of the Competition and Markets Authority responsible for advice, monitoring and reviewing the operation of the UK subsidy control regime.  |
| Subsidy Control Act:                 | refers to the Subsidy Control Act 2022 and associated statutory guidance.   |
| Tiering Tool                         | Means the Council's assessment tool for tiering contracts by value, risk, impact and complexity   |
| Voluntary Sector Organisation (VSO): | means not for profit organisation that has social objectives as its purpose for existence   |
| Value for Money/Best Value           | <p>The best mix of quality and effectiveness for the least outlay over the period of use of the goods/ services bought. It is not about minimizing up-front costs, 'four Es' – economy, efficiency, effectiveness and equity:</p> <ul style="list-style-type: none"> <li>• economy – minimising the cost of resources for an activity ('doing things at a low price')</li> <li>• efficiency – performing tasks with reasonable effort ('doing things the right way')</li> <li>• effectiveness – the extent to which objectives are met ('doing the right things').</li> <li>• equity - This reflects the extent to which services are available to, and reach, the people they are intended for, and whether the</li> </ul> |

benefits from the services are distributed fairly.

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 [Code of Conduct](#) for Officers and Members, the [Council's Commercial Strategy](#) and the guidance available on the [Procurement Team 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 Subsidy Control Act must be complied with and 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 Procurement Team and 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 up to and including £100,000, 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).
  - (d) Mandatory works by statutory undertakers, such as utility companies
  - (e) External or grant funding to be allocated in accordance to set terms, for example use of specified contractors for works being funded by the grant
  - (f) The creation or acquisition of a unique work of art or artistic performance
  - (g) Renewals where the supply is restricted to the original supplier.
- 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 and accountable 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 Council's Monitoring Officer.
- 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 and SharePoint.
- 1.10 These Rules shall be reviewed periodically by the Executive Director, Core Services in consultation with the Council's Procurement Team and other key officers.
- 1.11 These rules also apply to procurements undertaken by the Council's LATCS (e.g., 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 do not infringe the Subsidy Control Act (or EU State Aid Law where the grant was given under that regime) and comply with Public Procurement Law and the conditions of the grant in which the funding was given. Examples of grant funding given under the State Aid regime 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 the Subsidy Control Act (or EU State Aid Law where the grant was given under that regime), Public Procurement Law and the conditions of the grant funding can lead to the claw back of funding or other sanctions. Depending upon the characteristics of the breach, claw back could be up to 100% of the grant plus interest. Additional procedural rules apply to grants under the Subsidy Control Act, including obligations to publish information on the BEIS transparency register and, for certain types and/or value of grant, to first seek approval of the Subsidy Advice Unit before the grant can be given.
- 2.3 There are separate penalties for breaches of Public Procurement Law.
- 2.4 Where funding is sought to fund a procurement project no part of the Council should apply for the funding unless it has first fully considered and planned how it will be able to demonstrate compliance with the Subsidy Control Act, 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 [Procurement Team Intranet Site](#)

#### **4. Zero Carbon 40/45 Commitment**

- 4.1 All procurements regardless of value should consider the objectives of the Council's [Energy Strategy](#) and whole life costs associated with the contract and where possible include actions that will assist in the delivery of the strategy.

#### **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. Template forms are found on the [Procurement Team Intranet Site](#).
- 5.3 For procurements led by the Procurement Team it is their responsibility to manage this process by ensuring the forms are completed by all members of the project team.
- 5.4 The conflict of interest form should be completed at the start of the process and updated when bids are received and retained for audit trail purposes.
- 5.5 Where there is a conflict of interest (COI) involved, the project team must consider the declared conflict and document a mitigation plan which must be approved by the Service Director. 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.

#### **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 and/or

consult with the Procurement Team to determine if the services required are already procured as set out below:-.

- (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/Best Value 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) existing contracts may be in place for works, services or goods required which are provided in-house or through a Council Local Authority Trading Company. Enquiries with the Procurement Team must be made before commencing a new procurement 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.
- (vi) all such bids will be treated as confidential and will not be used other than for the purposes for which they are sought.
- (vii) where goods, services or works 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 goods, service or works 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 may be in place for works, services or goods, this should be utilised rather than sourcing alternative providers in circumstances where the scope, overall estimated value and term of the contract allows.

(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 Procurement 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 [Procurement Team 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) 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 a delegated officer, Cabinet Spokesperson, or Cabinet, or Council whichever is required in accordance with the Council's Constitution).
- (d) the Council's requirements are clearly documented in the form of a specification and an explanation of the detailed outcomes and performance standards 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 and into the contract management phase.
- (h) in relation to contracts led by the Procurement Team a [Procurement Event Approval Document](#) (PEAD) process 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 in-house 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 [Procurement Team Intranet Site](#). DPIA guidance can be obtained from Information Governance. The requirement to perform the pre assessment applies to all procurements regardless of value to ensure compliance with Data Protection Act (2018) and the Equalities Act (2010). 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, any social value criteria and all weightings. The criteria, sub-criteria and weightings should be made available to bidders simultaneously as early as practicable in the procurement process and not later than the invitation to tender/quotation stage. Sub-criteria and weightings cannot be used which have not previously been brought to a bidder's attention. More information is available on the [Procurement Team Intranet Site](#).
- (n) the Procurement Event Approval Document (stage three- Procurement Strategy) must include the following for all procurements led by the Procurement Team:
  - 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 market's ability to deliver
  - to enable feedback from the market on the proposed procurement methodology prior to the procurement
  - 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 and Value for Money can be measured.

## **8. Grants**

- 8.1 Grants can be considered as a means of funding a third-party organisation to provide specialist services direct to residents 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 before award of any grant funding, to ensure that correct documentation is put in place and that the grant complies with the requirements of the Subsidy Control Act.

The following should be considered as a minimum:

- if a Grant Agreement is the most appropriate form of documentation to adopt;
- the source of the funding, and compliance with terms and conditions of any external funding body;
- compliance with the Subsidy Control Act (including procedural requirements);
- 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)
  - value of grant and 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](#)

8.4 In addition, the Subsidy Control Act requires some grants to be published on the BEIS transparency register within 3 months of the grant being given. Officers should consult with Legal Services and contact [subsidy@barnsley.gov.uk](mailto:subsidy@barnsley.gov.uk) to ensure that grants are correctly published where required under the Subsidy Control Act.

## **9. Concessions**

9.1 Before any Concession Contract procurement is commenced 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 Procurement Team, Director of Finance (Section 151 Officer) and from Legal Services.

9.3 Advice from Legal Services and Procurement Team 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 £100,000 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 £100,000 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 Customer Information and Digital 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 £100,000 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 Director – Law & Governance and the Director of Finance.
- 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 known 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, collateral 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 [Procurement Team 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 £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](#).

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 £25,000.

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 [Procurement Team Intranet Site](#).

The main procurement routes for competition are detailed below:

#### 14.7 **Contracts up to and including £50,000**

For contracts valued up to and including £50,000 a Procuring Officer 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. In addition, all contracts awarded above £25,000 must have a contract award notice publicised on Contracts Finder. This includes contracts created by a single quotation.

The Procuring Officer should ensure that the contract has been scored prior to any procurement process in line with the Council's Tiering Tool to assess the level of contract management required once a supplier is appointed.

The Procuring Officer should complete a Best Value Form (Single Quote) or Best Value Form (Quote Process) to document the process undertaken to select a supplier on each contract between £5,000 and £50,000.

#### 14.8 **Contracts between £50,001 and up to and including £100,000 for goods and services and £250,000 for works**

For contracts above £50,000 and up to and including £100,000 for goods and services and £250,000 for works, the Procuring Officer must seek to achieve competition and for that purpose invite at least three quotations via YORtender.

The Procuring Officer should ensure that the contract has been scored prior to any procurement process in line with the Council's Tiering Tool to assess the level of contract management required once a supplier is appointed.

Where appropriate at least two of the companies invited to quote should be local businesses. The Council defines 'Local' as postcodes within the Barnsley Borough area.

The following link is a list of postcodes that form the Barnsley Borough

<https://checkmypostcode.uk/south-yorkshire/barnsley#.XzKx2ihKg2w>

In instances where only a single bid is received, then the Executive Director must satisfy themselves that Value for Money has been achieved.

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.

The Procuring Officer should complete a Best Value Form (Quote Process) to document the process undertaken.

If the Procuring Officer chooses to publish the opportunity to the open market, rather than a select list of suppliers, then a Contracts Finder notice must be published if the value of the contract is above £25,000.

The Procuring Officer is responsible for ensuring contracts with an aggregated contract value of £5,000 and above are placed upon the Council's [Contract Register](#) in accordance with legislative requirements. In addition, all contracts awarded above £25,000 must have a contract award notice publicised on Contracts Finder.

#### 14.9 **Contracts between £100,001 and up to the FTS thresholds for goods and services and £250,001 and up to FTS threshold for works**

All procurement above £100,001 for goods and services and **£250,001 for works** in total contract value must be led by the Procurement team.

For procurements above £100,000 for goods and services and **£250,001 for works** to the FTS threshold, an open tender procedure must be followed unless a Framework/Dynamic Purchasing System is deemed suitable for the requirements. This procedure 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.

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). When forming the procurement strategy consideration should be given to the timescales allowed for responses to ensure all suppliers have adequate time to complete their tender submission, maximising this where possible to allow time for a detailed submission.

The [Procurement Event Approval Document](#) will document how the contract has been scored prior to any procurement process in line with the Council's Tiering Tool to assess the level of contract management required once a supplier is appointed.

#### 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 and are set **inclusive of VAT**. The [Procurement Team 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 Procurement Team.

- (b) Publication of all FTS notices will be performed by a member of the Procurement Team. A contract notice in the prescribed form shall be published on FTS in order to invite tenders or expressions of interest, along with a Contracts Finder notice.

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

#### 14.11 **Open Procedure**

Refer to Rule 14.9 0 and 0 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, which must also be included on a Contracts Finder notice.

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, in accordance with the PCR 2015 (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.

If fewer than 5 suppliers have applied who met the requirement and are absent of any grounds for exclusion and meet minimum standards included in the tender documents all those who have applied shall receive an invitation to tender.

The procedure shall only be performed by the Procurement 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 on FTS and also on Contracts Finder.

This procedure shall only be performed by the Procurement 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, in line with Regulation 19 of the Public Contract Regulations.

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, 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 Procurement 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 undertaken in procurements led by the Procurement Team in partnership with Legal Services.

## **15. External 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, the Framework or DPS must be used in the way in which it was advertised and in line with its own terms and conditions.
- 15.2 Where such relevant Framework Agreements contain a number of different suppliers able to provide goods, services, or works, unless there is a specific ability to make a direct award under the Framework Agreement or DPS a mini competition between all suppliers should be undertaken.
- 15.3 Where a direct award under a Framework Agreement is progressed a Best Value Form should be completed.
- 15.4 The Council may need to complete an access agreement prior to utilisation of the framework. Legal Services and the Procurement Team should be consulted before this is signed.

## **16. Internal Frameworks/Dynamic Purchasing Systems**

- 16.1 Framework Agreements / Dynamic Purchasing Systems shall be procured in accordance with these Rules and the Regulations and where the relevant Regulation 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)
- 16.2 All call offs / mini competitions from Framework Agreements/Dynamic Purchasing Systems must be performed on YORtender and linked to the overarching agreement.
- 16.3 All call offs / mini competitions are subject to the same transparency notices for Contracts Register and Contracts Finder.

## **17. Exceptions to Requirements of Competition (where the Regulations do not apply) for contracts above £50,000 and up to and including £100,000 for goods and services and up to and including £250,000 for works**

- 17.1 In exceptional circumstances and considering all the information available an accountable Executive Director may decide that it is justified to invite less than three quotations in a particular instance or type of transaction.
- 17.2 Where an exception to the requirement for competition is sought a [Waiver to Competition Form](#) must be completed by the Procuring Officer and signed off by the accountable Service Director and Executive Director prior to the procurement and contract being agreed.
- 17.3 Regardless of the exception Council's governance processes must be complied with, e.g., Equality Impact Assessment (EIA), Data Protection Impact Assessment (DPIA) and the relevant approval to spend obtained prior to commitment.
- 17.4 The relevant Executive Director shall ensure the goods/services and/ or works to be procured subject to exception to competition have a fully detailed specification and the Council terms and conditions agreed with the supplier.
- 17.5 When completing the [Waiver to Competition Form](#), the Procuring Officer should explain their reasons for this exception to competition and should be progressed for signatures.
- 17.6 If the waiver is being progressed based on strategic or tactical reasons the Procurement Team must be consulted prior to signatures being sought.
- 17.7 Exceptions covered by a [Waiver to Competition Form](#) up to and including £100,000 **must** be reviewed and signed by the relevant Service Director prior to being signed by the relevant Executive Director. Completed waivers should be emailed to [procurement@barnsley.gov.uk](mailto:procurement@barnsley.gov.uk)
- 17.8 The Procurement Team will record and allocate a waiver reference number which will be provided to the Procuring Officer to be added to the purchase order and the project file on YORtender.
- 17.9 The Procuring Officer will include in the waiver confirmation of how Best Value is being sought.
- 17.10 The Procuring Officer will be responsible for ensuring that a contract is executed with the awarded supplier, where relevant and that the publications to Contracts Register and Contracts Finder are progressed in line with transparency requirements.

## **18. Exceptions to Requirements of Competition for contracts above £100,000 for goods and services and above £250,000 for works**

- 18.1 For contracts above £100,000 for goods and services and £250,000 for works and not covered by the Regulations (Rule 19 below), if the relevant Executive Director is satisfied that an exception to competition is required due to reasons as set out in Rule 18.8 below, Rules 14.9 to 14.15 shall not apply, subject to obtaining the necessary approvals.

- 18.2 Where an exception to the requirement for competition is sought a [Waiver to Competition Form](#) must be completed by the Procuring Officer and signed off by the accountable Service Director and Executive Director prior to the procurement and contract being agreed.
- 18.3 The relevant Procuring Officer 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 18.8 below).
- 18.4 The report must be submitted by the Procuring Officer in the following order:
- Accountable Service Director
  - Accountable Executive Director
  - Service Director – Law & Governance
  - Director of Finance (S151 Officer).

Approval and/or comments shall be provided in the format set out in the Waiver to Competition Form.

The Procuring Officer must ensure an electronic version of the report is sent to [procurement@barnsley.gov.uk](mailto:procurement@barnsley.gov.uk)

- 18.5 The Procurement Team will record and allocate a waiver reference number which will be provided to the Procuring Officer to be added to the purchase order and the project file on YORtender.
- 18.6 The Procuring Officer will include in the waiver confirmation of how Best Value is being sought, except where the exception is a variation to an existing contract where a [Procurement Event Approval Document – Variation](#) will be completed by the Procurement Team at the point the waiver reference is issued.
- 18.7 The procedure set out in Rule 18.3 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.
- 18.8 The reasons why an exception to 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
- 18.9 The Procuring Team will be responsible for ensuring that a contract is executed with the awarded supplier, where relevant and that the publications to Contracts Register and Contracts Finder are progressed in line with transparency requirements.

#### **(a) No Available Competition**

The relevant Executive Director can approve 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 can approve a contract variation under a waiver in the following circumstance.

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 the Procurement Team.

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.

A [Procurement Event Approval Document – Variation](#) shall be completed for all variations on contracts above £100,000 for goods and services and £250,000 to ensure that all due diligence checks are performed for compliance purposes and the sustainability of the contract.

#### **(c) Emergency Circumstances**

The relevant Executive Director can approve an exception where purchases for goods and services or works are required urgently, due to circumstances not foreseeable and not attributable to the Council, as not to permit compliance with the requirements of competition.

A lack of planning or resource to progress the competition should not be used as the rationale for this approach.

#### **(d) Strategic/Tactical Procurement**

The relevant Executive Director can approve a waiver where the Procuring Officer and the relevant Service Director, the Procurement Team and Legal Services 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
- would cause significant inconvenience or substantial duplication of costs for the Council.

Waivers progressed under this exception must outline the future procurement plans to ensure alignment with these Rules in future requirements.

#### **15. Exceptions to Requirements of Competition (where the Regulations do apply)**

- 15.1 Where the Regulations apply, they must be complied with. Further advice and guidance can be sought on the [Procurement Team Intranet Site](#)
- 15.2 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.
- 15.3 All such applications for an exception to competition should be in accordance with the relevant provisions of the Regulations.
- 15.4 The Procurement Team shall maintain a register of all such exceptions at any value.
- 15.5 In compliance with the Local Government Transparency Code, all contracts created after an exception 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.

#### **16. Submission of Bids**

##### **16.1 Submissions for projects up to and including £50,000**

The 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](#).

#### **16.1 Submissions for projects above £50,000**

YORtender must be used for the return / submission of quotations and tenders in accordance with the system's requirements. All documentation must also be stored on SharePoint in line with the Council's [Records Retention Policy](#).

#### **16.3 Late Submissions (SQs)/Quotations/Tenders**

The opening and release of submitted bids (after the specified deadline) must be performed on YORtender, if a competitive exercise above £50,000 or the opportunity has been published on YORtender.

Late bids may only be accepted, at any stage of the procurement process where it can be demonstrated the bidder has gained no advantage as a result of the late submission and this is due to circumstances beyond their control.

Bids submitted outside the YORtender system shall not be accepted, unless this is as a result of the above circumstances.

### **17 Evaluation of Quotations and Tenders**

**17.1** 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.

**17.2** Records should be kept of the evaluation process, which should include criteria, sub-criteria, weightings, individual and consensus scoring including completed moderation forms (with electronic confirmation or 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 Sharepoint and in accordance with the Council's Records Retention Policy.

**17.3** Where the total value of a contract is higher than the budgeted value, additional approval from the budget holder and allocated Strategic Finance Business Partner must be obtained prior to proceeding with a contract award.

**17.4** If the value exceeds the level of authority already obtained for the spend additional approval based on the revised value should be sought, from Cabinet Spokesperson or Cabinet in line with delegated authority thresholds.

**17.5** Procuring Officer for procurements which are below the thresholds for procurement led by the Procurement Team should refer to the [Procurement Team Intranet Site](#) for further guidance and documentation to be used for evaluation of bids.

### **18 Due Diligence**

- 18.1 Due diligence on all bidders should be performed for every contract, regardless of value and route to procure to mitigate risk to the Council.
- 18.2 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.
- 18.3 Where a 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.
- 18.4 Procuring Officer for procurements which are below the thresholds for procurement led by the Procurement Team should refer to the [Procurement Team Intranet Site](#) for further guidance and documentation to be used to undertake due diligence checks.
- 18.5 The Contract Manager will be responsible for ensuring ongoing due diligence on the awarded supplier during the term of the contract in line with the Contract Management Plan.

## **19 Errors in Quotations/Tenders**

- 19.1 Certain tender 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.
- 19.2 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.
- 19.3 All amendments shall be fully recorded with justification for the action taken.
- 19.4 Clarification requests should be requested in writing via YORtender and any response from bidders should also be in writing via YORtender. Where necessary, advice should be sought from the Procurement Team and 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 Purchasing Procurement and Contract Management, the Service Director – Law & Governance and the Director of Finance (S151 Officer)

**20.2 Post Tender Negotiations (Negotiations after receipt of formal bids and before award of contract)** Where the Regulations apply, they must be followed. Post tender negotiations are not allowed in above threshold procurement processes unless the competitive process with negotiation tender procedure is used.

**20.3** 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.

**20.4** In exceptional circumstances, where the Service Director – Law & Governance considers that post tender negotiations are in the Council's interests and may achieve added value then post tender negotiations may be appropriate.

**20.5** 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.

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

- (a) approved by the accountable Executive Director in consultation with the Head of Strategic Purchasing, Procurement and Contract Management and the Service Director – Law & Governance and are carried out in accordance with the law.
- (b) 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.

## **21 Acceptance of Quotations/Tenders and Award**

**21.1** 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.

**21.2** 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.

- 21.3** 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 [Procurement Team Intranet Site](#) for guidance.
- 21.4** 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. Where possible this standstill should be applied to the below threshold procurements to align to best practice.
- 21.5** Procuring Officer for procurements which are below the thresholds for procurement led by the Procurement Team should refer to the Procurement Team Intranet Site for further guidance and documentation to be used for acceptance of bids and award of contracts.
- 21.6** 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 – Law & Governance has been obtained.
- 21.7** Unsuccessful bidders may request a debrief which should be provided to them in writing. Further information is available on the [Procurement Team Intranet Site](#).

## **22 Contracts Register and Contract Award Notices**

- 22.1** All contracts above £5,000 must be promoted to the Council's [contracts register](#) on YORtender. This includes contracts created by a single quotation.
- 22.2** 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, which is deemed the first date after the last signature is added to the contract and BEFORE any other award notice is publicised.
- 22.3** 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, which is deemed the first date after the last signature is added to the contract.

## **23 Record of all Procurement Documentation**

- 23.1** A full audit trail of the whole procurement process including all internal documentation (e.g., Best Value Form/Equality Impact Assessment/ Data

Protection Impact Assessment) shall be maintained in the relevant tender file within the YORtender e-tendering system and on SharePoint.

## **CONTRACT FORMALITIES**

### **24 Contracts**

- 24.1** 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 – Law & Governance where necessary.
- 24.2** 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 £100,000
  - must be signed by two Executive or Service Directors and at least one of those officers shall be the Service Director – Law & Governance or their authorised signatory where the contract value is over £100,000
- 24.3** Every contract executed under seal must be signed by an Executive Director or Service Director and the Executive Director of Core Services, or their delegated officer.
- 24.4** 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 – Law & Governance considers necessary.
- 24.5** Where possible Contracts should be signed electronically by all relevant parties using the Council's electronic signature system.
- 24.6** Any standard terms and conditions of contract submitted by a supplier shall not be accepted without advice or review from Legal Services.
- 24.7** 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 Legal Services before utilising a letter of intent.

## **25 Contract Management**

The arrangements for managing Council contracts should be in line with the National Audit Office's *Good Practice Contract Management Framework*.

### **25.1 Executive Directors must;**

- (a) Ensure that the Council's approved processes for contract management, as set out in the Contract Management Toolkit are adhered to;
- (b) Assign a Senior Responsible Officer (SRO) to every contract and ensure a suitably qualified, experienced and trained officer is assigned to be the Contract Manager. SRO's and Contract Managers will undertake appropriate training to support commercial capability;
- (c) Ensure work under the contract does not begin until the contract has been signed or sealed and dated;
- (d) Allocate a Procuring Officer who will consult with the assigned Contract Manager in the development of the procurement and ensure contracts are tiered under the Tiering Tool and scored as gold, silver or bronze. Contracts shall be scored initially as part of the procurement process, updated at contract award and reviewed periodically during the contract term;
- (e) Where a Best Value form is required, undertake a scoring exercise on the contract and update the appropriate form;
- (f) Develop a Contract Management Plan for all contracts. The Contract Management Plan should be linked to the scoring of the contract and detailed to reflect whether it is a gold, silver or bronze contract; and
- (g) The Contract Management Plan from the Procuring Officer must be handed to the Contract Manager and SRO once the contract has been signed.

**25.2** Gold contracts will have a nominated commercial lead from the Procurement Team to support Contract Managers and SROs or undertake the contract management as appropriate.

### **25.3 The Contract Manager is responsible for:**

- (a) Ensuring that the contract is carried out in accordance with its terms and conditions;
- (b) Ensuring that an appropriate mobilisation and implementation plan (as defined in the procurement) is followed;



- (c) Monitoring the supplier's performance, ensuring compliance and escalating issues in accordance with the contract and Council governance arrangements;
- (d) Monitoring cost and value for money requirements including contract expenditure against budget;
- (e) Monitoring risk management, ensuring mitigations and management plans are in place as appropriate;
- (f) Formal and documented periodic reviews in accordance with the contract and Contract Management Plan;
- (g) Ensuring the supplier complies with the Council's policies;
- (h) Ensuring that the supplier maintains the necessary insurances and other relevant policies required by the contract;
- (i) Ensuring any minor changes and variations to the contract are undertaken compliantly and approved and appended to the contract documentation before they are implemented;
- (j) Keeping a record of all valuations, payments, claims, monitoring, changes and certificates under the contract. Payments must only be made against a valid invoice;
- (k) Meeting with suppliers to discuss performance, Key Performance Indicators must be used to assess performance at least every 12 months; and
- (l) Ensure exit planning is undertaken and make recommendations on options for future procurements / extensions to the contract.

## **26 Contract Variations**

- 26.1** An above FTS threshold 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.
- 26.2** 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 Regulations and the Executive Director will need to ensure Value for Money is considered.
- 26.3** A variation not provided for in an existing Contract may be implemented subject to waiver in competition subject to clause 18.8 of these Rules and that it complies with clause 26.4
- 26.4** 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.
- 26.5** 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 and where a proposed variation exceeds 50% of the original contract value appropriate advice should be sought from the Procurement Team and Legal Services in the first instance.

The Procurement Team should be notified of any contract variations that materially change the original scope and value of the contract.

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

**26.7** For contracts above £100,000, 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

## **27 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 materially change the original scope of the contract. Advice should be sought from Procurement Team and Legal Services to ensure any extension proposed complies with procurement regulations and the Executive Director will need to ensure Value for Money is considered.

**28.3** An extension not provided within the existing contract will be subject to exception to competition and must be supported by a waiver approved by the accountable Executive Director.

**28.4** For contracts above £100,000, 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.

## **28 Contract Novations**

**28.1** A contract should not be novated to another provider unless it complies with Regulation 72 of the Regulations.

**28.2** 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 the Procurement Team.

**28.3** The Procurement Team and Legal Services must be consulted on all contract novations prior to agreement with the supplier.

**28.4** Due diligence must be performed on all novations prior to any agreement to the novation to ensure the Council is protected.

**28.5** For contracts above £100,000, 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.