

## **AGENDA ITEM: 8**

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Meeting	Audit Committee
Date	20 March 2007
<b>Subject</b>	<b>Update of the Contract Procedure Rules</b>
Report of	Executive Director for Resources
Summary	This report proposes that the Council adopt the appended revised Contract Procedure Rules. The overall objective of these new rules is to enable services to deliver effectively and efficiently and comply with the updated legislation.

Officer Contributors	Mark Burgess, Head of Corporate Services Katerina Athanasiadou, Procurement Policy Manager
Status (public or exempt)	Public
Wards affected	Not applicable
Enclosures	Appendix A: Revised Contract Procedure Rules Appendix B: Comparison of current and revised Contract Procedure Rules (TO FOLLOW)
For decision by	The Audit Committee
Function of	Council
Reason for urgency / exemption from call-in (if appropriate)	None

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## **1. RECOMMENDATIONS**

- 1.1 That the Contract Procedure Rules attached at Appendix A be recommended to the Special Committee (Constitutional Review) for approval and subsequent recommendation for adoption in place of the existing rules at Council.**
- 1.2 That the Executive Director for Resources be instructed to advise the Special Committee (Constitution Review) of this Committee's decision under 1.1 above.**

## **2. RELEVANT PREVIOUS DECISIONS**

- 2.1 Adoption of the Contract Procedure Rules in 12 July 2001 within the new Constitution.
- 2.2 Council 9 September 2003, on recommendation of the Special Committee (Constitution Review), 23 July 2003 – approved revised Contract Procedure Rules.

## **3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS**

- 3.1 The Council's Procurement Strategy sets out the need to update the Contract Procedure Rules to improve the flexibility and efficiency of procurement in Barnet. This supports recommendation 11 of the Byatt Report which recommends that "local authorities review their standing orders to ensure they promote efficient and effective procurement whilst maintaining safeguards of probity and good governance".
- 3.2 The aims of the Procurement Strategy support the delivery of the Corporate Plan by enabling the procurement of best value goods and services. This is in accordance with the Corporate Plan's cross-cutting priority of a 'Better Council for a Better Barnet'. The revised Contract Procedure Rules provide the framework for effective and efficient procurement of works, supplies and services.

## **4. RISK MANAGEMENT ISSUES**

- 4.1 Failure to comply with legislation may result in the Authority receiving a fine.

## **5. EQUALITIES AND DIVERSITY ISSUES**

- 5.1 The necessary documents relating to the bidding process were updated to include evaluation of equalities and diversity compliance of potential contractors. The standard documents currently used for tendering are the OJEU – Official Journal of European Union notice to refer specifically to selection criteria "In accordance with Articles 48 to 51 of Directive 2004/18/EC and Regulation 23-26 of the Public Contracts Regulations 2006", Pre Qualification Questionnaire section B3 and Tender section B3.

## 6. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

- 6.1 Contract Procedure rules govern the way in which the Council procures its supplies, works and services.

## 7. LEGAL ISSUES

- 7.1 The predominant reason of this report is to comply with the procurement law update.

## 8. CONSTITUTIONAL POWERS

- 8.1 Constitution Part 3, Section 2 details the functions of the Audit Committee including “to maintain an overview of the Council’s constitution in respect of contract procedure rules and financial regulations”.

## 9 BACKGROUND INFORMATION

- 9.1 The need to amend the Contract Procedure Rules arises from major changes to the Consolidated Public Procurement Directive 2004/18/EC and Public Contracts Regulations 2006. Further amendments reflect changes to the Council’s management structure. The key proposals are explained in more detail below:

### 9.2 *Restructure Changes*

Job Role Titles changed in respect of the current organisational structure:

- Strategic Procurement team to Corporate Procurement Team
- Head of Strategic Procurement to Head of Corporate Services

### 9.3 *Change in the EU - European Union Thresholds*

- 9.3.1 To encourage healthy competition between suppliers from EU member states the European public procurement directives for supplies, services and works mandate specific rules and regulations for contracts above particular values, known as thresholds. The actual values are based on an International Monetary Fund rate and the thresholds are transposed into £ sterling every two years. The current values for local and regional authorities are shown below:

	Supplies	Services	Works
Current Threshold	£154,477	£154,477	£3,861,932
Changed Threshold	£144,371	£144,371	£3,611,319

- 9.3.2 The table above details the recommended thresholds for a London Borough to adopt. It is recommended that the EU Thresholds are adopted as the minimum formal tender threshold levels. This is to prevent unnecessary cost and controls which will deliver little benefit to the authority. Alignment of the Authority’s thresholds to the EU thresholds will also simplify the tender process and minimise confusion over two sets of thresholds.

9.4 It is also proposed that thresholds for the tendering of works, supplies and services be adjusted in line with EU Thresholds as follows:

- Contracts for **supplies and services** valued at:
  - less than £25,000 require a reasonable means of selection;
  - between £25,000 and £74,999 require minimum two competitive quotes;
  - between £75,000 and £143,999 require minimum three competitive quotes;
  - £144,000 or more must follow an approved tendering process.
- Contracts for **works** valued at:
  - less than £25,000 require a reasonable means of selection;
  - between £25,000 and £74,999 require minimum two competitive quotes;
  - between £75,000 and £143,999 require minimum three competitive quotes;
  - between £144,000 and £499,999 require minimum five competitive quotes;
  - more than £500,000 must follow an approved tendering process.

#### 9.5 ***Enhanced Gateway Review Process***

The aim of the Gateway Review Process is to ensure that the larger procurements are appropriately structured and will therefore deliver value for money to the Council. The process will apply to tenders for supplies and services valued at £144,000 or more and tenders for works valued at more than £500,000.

- There is an addition at the first checkpoint, that the proposed contract must be cleared subject to consultation with local trade unions prior to Corporate Procurement Team's approval, before it may go out to tender. The aim of this is to ensure trade union's involvement in any procurement exercised.
- The second checkpoint would be six months after the contract award and would assess the contract monitoring arrangements. The aim is to ensure that appropriate structures have been put in place to ensure that Council receives the services for which it is paying. Therefore the Gateway Review Check 2 form has been revised accordingly and the necessary responsibility re-emphasised.

#### 9.6 ***Enhancement and Inclusion of Urgency/Emergency Waivers***

Heads of Service may take decisions on urgent matters as set out in the Leader's Scheme of Delegation providing they report afterwards to the relevant decision making body setting out the reason for the urgency. A waiver of the Contract Procedure Rules may be agreed by the appropriate decision making body if they are satisfied after considering a written report by the appropriate officer that the waiver is justified because:

- the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or

- the contract is for works, goods or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
  - the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English law); or
  - there are other circumstances which are genuinely exceptional
- Waivers as a rule should only be used in unforeseen or exceptional circumstances. Waivers should not be utilised for reasons of poor planning.

Acceptable circumstances where waivers may occur may include:

1. There is an emergency requirement which was unforeseen.
2. The procurement is for a good or service where competition is impracticable and it is not in the interests of the Council to pursue a competitive tender. An example may include where the Council has purchased IBM Hardware and is required to undertake an IBM proprietary software package to be utilised on the hardware.
3. There are exceptional circumstances where it is genuinely not in the interests of the Council to adhere to the Contract Procedure Rules. Exceptional circumstances may include where a supplier unexpectedly goes out of business or there is a terrorist attack.

All waivers need to be properly documented and an audit trail provided for the circumstances and persons involved, including full explanation and sign off.

## 9.7 ***Consortia Purchasing & Framework Agreements***

Enhanced guidance about the use of Consortia and their link to and inclusion of Framework Agreements.

**“Framework agreement”** is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. In the UK we would know this as a “standing offer to treat”.

**“Consortia”** means a contracting authority which:

- (a) acquires goods or services intended for one or more contracting authorities;
- (b) awards public contracts intended for one or more contracting authorities; or
- (c) concludes framework agreements for work, works, supplies, services intended for one or more contracting authorities; otherwise known as **“central purchasing body”**.

Before promoting the procurement of a new or joining a pre-existing framework or consortium arrangement, the Executive Director for Resources must be satisfied that such an approach represents the most economically advantageous solution for a service work, supply or utility provision and with regard to the Relevant EU Rules on the use of such arrangements.

Before procuring or entering into a framework or consortium arrangement, the Executive Director for Resources shall be satisfied that:

- the term of the arrangement shall be or is for a period of no longer than four years duration;
- the terms and conditions of the arrangement do not compromise the Council's contractual requirements;
- the parties to the arrangement are recognised public bodies or providers from the private sector as approved by the Contracting Committee;
- full, open and proper competition in respect of the creation of the framework or consortium arrangement has taken or will take place in accordance with the Relevant EU Rules and/or Relevant Contract Procedure Rules.
- Where the Government Procurement schemes Catalist (formerly known as GCAT, SCAT and LCAT) and DfES are to be used

#### 9.8 ***Contract Management & Monitoring***

This section has been updated to emphasise the need of Contract Management and Monitoring with further detailed guidelines provided in the Code of Practice.

During the life of the contract Heads of Service must ensure that systems are in place to manage and monitor contracts in respect of:

- contract performance and key performance indicators;
- compliance with specification and contract;
- Cost; cross check contract payments to work done or supplies or services supplied;
- Ensuring continuous improvement and any Best Value requirements;
- User satisfaction, lessons learned and risk management;
- eliminating unlawful discrimination and promoting equalities;
- all the above in accordance with any instructions given by the Chief Auditor;
- Ensure that a Gateway Review Check 2 is performed 6 months after contract award.

### **10. LIST OF BACKGROUND PAPERS**

10.1 The EU Procurement Directive 2004/18/EC by Cips, Bip Solutions and I&Dea.

10.2 The Public Contract Regulations 2006.

10.3 Papers can be obtained from Katerina Athanasiadou, Procurement Policy Manager.

Legal: JL  
CFO: CM

## Appendix A



## Contract Procedure Rules



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# **1 Introduction**

- 1.1 Procurement decisions are among the most important decisions a manager will make because the money involved is public money and the Council is concerned to ensure that high quality supplies, works and services are provided. Efficient use of resources in order to achieve best value is therefore an imperative. The Council's reputation is equally important and should be safeguarded from any imputation of dishonesty or corruption.
- 1.2 For these reasons it is a disciplinary offence to fail to comply with Contract Procedure Rules and the Procurement Code of Practice when letting contracts and Council employees have a duty to report breaches of Contract Procedure Rules to an appropriate senior manager and the Head of Internal Audit and Ethical Governance.
- 1.3 The Contract Procedure Rules provide the framework within which the Council may procure works, supplies and services. The aim of these rules is to:
  - 1.3.1 ensure value for money and propriety in the spending of public money; and
  - 1.3.2 to enable services to deliver effectively and efficiently without compromising the Cabinet's ability to influence strategic decisions.
- 1.4 To ensure the continued effectiveness of the Contract Procedure Rules, the Cabinet Resources Committee may, from time to time, amend the thresholds set out below as deemed appropriate.
- 1.5 Reference should be made to the Procurement Code of Practice for more detailed procurement procedures
- 1.6 The Procurement Code of Practice provides more detail on procurement processes and shall govern Council tendering and contract procedures. The Executive Director of Resources, in consultation with the Chief Finance Officer and the Head of Legal, shall maintain and issue the Procurement Code of Practice. Any procurement activity shall proceed in accordance with the Contract Procedure Rules and Code of Practice.
- 1.7 The Contract Procedure Rules take precedence over the Procurement Code of Practice.

## **2 Application and Interpretation**

- 2.1 The Contract Procedure Rules shall apply to all contracts entered into by or on behalf of the Council. Exceptions to the Contract Procedure Rules can be approved by means prescribed by the Leader's Scheme of Delegation, Constitution Part 3 Responsibility for Functions.
- 2.2 Where the Council is entering into a contract as an agent for another public body or government department, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the body concerned.
- 2.3 The Council may adopt different Contract Procedure Rules for schools.
- 2.4 Unless the context otherwise requires, terms used in these Contract Procedure Rules shall have the meanings ascribed to them as set out in the Glossary of Terms to be found at Section 11.

## **3 Calculation of Contract Values**

- 3.1 Unless otherwise specifically provided, where a value or an estimated value is given in these Contract Procedure Rules it means the aggregate value payable in pounds sterling exclusive of Value Added Tax over the entire contract period, including any form of option and any renewals of the contract.
- 3.2 Directors or Heads of Service must ensure that a pre-tender estimate of anticipated costs is prepared and recorded in writing. Where EU Public Procurement rules apply, Directors or Heads of Service must also ascertain the value of a contract in accordance with those rules.
- 3.3 Contracts must not be artificially under or over estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Procedure Rules.

## **4 Responsibilities of Directors/Heads of Service**

- 4.1 Directors and Heads of Service are responsible for all contracts tendered and let by their service areas. Their duties in relation to contract letting and management are:
  - 4.1.1 to ensure compliance with English, U.K. and EU legislation and Council policy;

- 4.1.2 to ensure value for money in all procurement matters;
- 4.1.3 to ensure compliance with the Contract Procedure Rules and the Procurement Code of Practice;
- 4.1.4 to maintain a service scheme of delegation, in accordance with Constitutional Requirements;
- 4.1.5 to ensure that all relevant staff are familiar with the provisions of the Contract Procedure Rules and the Procurement Code of Practice and that they receive adequate training on their operation;
- 4.1.6 to ensure compliance with any guidelines issued in respect of these Contract Procedure Rules;
- 4.1.7 to take immediate action in the event of a breach of the Contract Procedure Rules or the Procurement Code of Practice within their directorate or service area;
- 4.1.8 to ensure that all existing and new contracts anticipated during the forthcoming financial year are clearly itemised in the Budget supporting documentation;
- 4.1.9 to keep proper records, of all contracts, tenders etc. including minutes of tender evaluation panels and other meetings which may be inspected by a member of the Council at any time during office hours;
- 4.1.10 to make appropriate arrangements for the opening of tenders and their secure retention so as to protect the integrity of the tendering process;
- 4.1.11 to submit to the Executive Director for Resources' Corporate Procurement Team tender forms and Gateway Review Forms as required by the Contract Procedure Rules;
- 4.1.12 to ensure original contract documents are forwarded to the Head of Legal for safekeeping;
- 4.1.13 to keep a register of all contracts over £25,000, which may be inspected by a member of the Council at any time during office hours;
- 4.1.14 to ensure effective management and monitoring during the lifetime of all contracts in their areas;
- 4.1.15 to seek and act upon advice from the Head of Legal, the Chief Finance Officer and the Executive Director for Resources where necessary to ensure compliance with these responsibilities;

- 4.1.16 to keep records of waivers of any provision of these Contract Procedure Rules.

## **5 Authorisation & Acceptance Procedures**

### **Authorisation Principles**

**“Authorisation”** is the approval required before quotations or tenders for a good, service or works may be sought.

- 5.1 The aim is to speed up the procurement process by removing unnecessary bureaucracy – in this case, a duplication of the authorisation process.
- 5.2 Any contract, including additions, extensions and variations, which has been included in a directorate or service’s Budget and supporting plans and strategies or any other Committee approved plan is deemed as authorised irrespective of value.
- 5.3 Any contract which has not been Authorised as set out in 5.2 must be Authorised as set out in Table 5-1.

### **Acceptance Principles**

**“Acceptance”** is the approval of the final terms and conditions for the purchase of supplies, services or works.

- 5.4 The aim is to speed up the process by allowing, where possible, the acceptance of tenders to be delegated to a level of authority lower than that required for Authorisation. This recognises that in most instances, the influencing decision is at the Authorisation stage, not at the point of Acceptance.
- 5.5 Table 5-1 sets out the Authorisation and Acceptance thresholds.

**Table 5-1: Authorisation (where not previously Authorised by the Budget and supporting plans and strategies) and Acceptance Thresholds for Works, Supplies and Services**

Level of authority for Authorisation and Acceptance	Contract Value*				
	Up to £24,999	£25,000 to £74,999	£75,000 to £143,999*	£144,000 to* £499,999	£500,000 and above
Authorisation by: (based on estimated contract value)	Director/Head of Service			Cabinet Member	Cabinet Committee
Acceptance** by: (based on actual contract value)	Director/Head of Service  Where tender/quotation is lowest or where tender/quotation represents value for money and is the best available option for the Council			Director/Head of Service  Where tender is lowest price	Cabinet Member  Where tender is lowest or where tender represents value for money and is the best available option for the Council, and the tender value is no more than 25 percent above the lowest priced tender.
				Cabinet Member  Where tender represents value for money and is the best available option for the Council.	
** Notes on Acceptance:	1. Acceptance of contracts in all cases is subject to: a) budgetary provision existing; b) the usual enquiries as to financial status. 2. Director/Heads of Service and Cabinet Members are required to consult the Chief Finance Officer in respect to value for money considerations. 3. Acceptance thresholds for contract extensions, additions and variations of all values are subject to further conditions as set out in the paragraph 5.6. Where the contract extensions, additions or variations do not meet the conditions in 5.6 and are less than £144,000 in value, the Director/Head of Service may still Authorise and Accept the contract but must report afterwards to the relevant Cabinet Member. If it is over £144,000 in value, Cabinet Committee authority should be sought. 4. Under no circumstances may a contract extension, addition or variation be Authorised more than once without being referred back to the relevant Cabinet Committee for Authorisation.				

\*Please check with CPT for the latest threshold set out by EU Regulations as these figures are subject to change.

## **Acceptance Parameters for Contract Additions, Extensions and Variations**

- 5.6 The Acceptance thresholds for contract additions, extensions and variations are as set out in Table 5-1 and also subject to the following:
  - 5.6.1 In the case of an additional contract, it is negotiated on the basis of, but is distinct from, an earlier contract and the initial contract was based on:
    - 5.6.1.1 a competitive tender or quotation;
    - 5.6.1.2 the initial contract was awarded not more than twelve months before the additional contract;
    - 5.6.1.3 not more than one additional contract may be negotiated on the basis of the initial contract;
    - 5.6.1.4 the value of the additional contract does not exceed the value of the initial contract.
  - 5.6.2 In the case of an extension to a contract, the initial contract was based on:
    - 5.6.2.1 a competitive tender or quotations;
    - 5.6.2.2 the initial contract has not been extended before;
    - 5.6.2.3 and the value of the extension is less than half the cost of the existing contract without the extension.
  - 5.6.3 In the case of a contract variation, and in accordance with the terms and conditions of that contract:
    - 5.6.3.1 the variation is notified in writing to the contractor;
    - 5.6.3.2 any additional expenditure necessarily incurred does not exceed 10% ten percent of the initial contract.

## **Urgent/Emergency Procedures & Waiver of Contract Procedure Rules**

- 5.7 Directors/Heads of Service may take decisions on urgent matters as set out in the Leader's Scheme of Delegation providing they report afterwards to the relevant decision making body setting out the reason for the urgency. A waiver of the Contract Procedure Rules may be agreed by the appropriate decision making body if they are satisfied

after considering a written report by the appropriate officer that the waiver is justified because:

- 5.7.1 the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procedure Rules is justifiable; or
- 5.7.2 the contract is for works, goods or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
- 5.7.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English law); or
- 5.7.4 there are other circumstances which are genuinely exceptional

## **6 Selecting Contractors**

### **European tender procedures and thresholds**

- 6.1 Tender procedures are governed by EU procurement regulations if the supplies, services or works contract is:
  - 6.1.1 Subject to European procurement regulations (see EU Checklist in the Procurement Code of Practice); and
  - 6.1.2 Greater than the following thresholds set in respect of the: Public Procurement Directive
    - 6.1.2.1 For Public Works - approximately £3.6 million; or €5 million \*
    - 6.1.2.2 For Public Services - approximately £144,000; or €200,000 \*
    - 6.1.2.3 For Public Supply - approximately £144,000; or €200,000 \*

\*Thresholds are valid from 31<sup>st</sup> January 2006. These thresholds will be revised every two years. Please check with CPT for the latest threshold set out by EU Regulation.

- 6.2 Most social care and housing services are likely to be Part B services that are only subject to the rules relating to specifications and to Barnet tender procedures



- 6.3 The Procurement Code of Practice provides more detail on the EU tendering requirements.

### **Barnet tender procedures**

- 6.4 For those contracts not subject to EU procurement regulations, tendering should follow guidance set out in the Procurement Code of Practice.
- 6.5 The Procurement Code of Practice will provide information on circumstances where it will be appropriate to use negotiated procedures. However, it is important that in any such circumstances the intention to negotiate is signalled before tenders or expressions of interest are issued, subject to the circumstances set out in section 9.
- 6.6 Thresholds for the tendering of works, supplies and services not subject to EU statutory requirements are set out in the table below.

**Table 6-1: Barnet tendering and quotation thresholds for works, supplies and services**

	Contract Value*					
	less than £25k	£25k up to £74,999k	£75k up to £143,999k*	£144k up to £499,999k*	£500k and up to £3.6m*	£3.6m* and over
<b>Supplies and Services Contracts</b>	Reasonable means of selection	Request two(2) or more written competitive quotations but must have minimum 2 returned. Less than 2 bids returned then repeat competition	Request three(3) or more written competitive quotations but must have minimum 2 returned. Less than 2 bids returned then repeat competition	Tendering process or other approved route required and Gateway Review Process must be used. May be subject to EU legislation		
<b>Works Contracts</b>	Reasonable means of selection	Request two(2) or more written competitive quotations but must have minimum 2 returned. Less than 2 bids returned then repeat competition	Request three(3) or more written competitive quotations but must have minimum 2 returned. Less than 2 bids returned then repeat competition	Request Five(5) or more written competitive quotations from approved list and Gateway Review Form must be used. Must have minimum 2 returned. Less than 2 bids returned then repeat competition	Approved Tendering Process required and Gateway Review Process must be used	Subject to EU legislation Tendering process required and Gateway Review Process must be used.

\*Please check with CPT for the latest threshold set out by EU Regulations as these figures are subject to change.

## Consortia Purchasing – Collaborative Working

- 6.7 Directors/Heads of Service may authorise the Council entering into Consortia purchasing arrangements not subject to these Contract Procedure Rules provided that the Executive Director for Resources has approved the Consortia and the terms and conditions of any proposed contract are acceptable to the Head of Legal.

## **Consortia Purchasing & Framework Contracts**

- 6.8 Before promoting the procurement of a new or joining a pre-existing framework or consortium arrangement, the Executive Director for Resources must be satisfied that such an approach represents the most economically advantageous solution for a service work, supply or utility provision and with regard to the Relevant EU Rules on the use of such arrangements.

Before procuring or entering into a framework or consortium arrangement, the Executive Director for Resources shall be satisfied that:

- 6.8.1.1 the term of the arrangement shall be or is for a period of no longer than four years duration;
- 6.8.1.2 the terms and conditions of the arrangement do not compromise the Council's contractual requirements;
- 6.8.1.3 the parties to the arrangement are recognised public bodies or providers from the private sector as approved by the Contracting Committee;
- 6.8.1.4 full, open and proper competition in respect of the creation of the framework or consortium arrangement has taken or will take place in accordance with the Relevant EU Rules and/or Relevant Contract Procedure Rules.
- 6.8.1.5 Where the Government Procurement schemes Catalist (formerly known as GCAT, SCAT and LCAT), DfES are to be used

## **Approved Lists**

- 6.9 At least one third of the organisations selected for tendering must be picked randomly.

The process for establishing and maintaining Approved Lists is set out in detail in the Procurement Code of Practice.

## **Single source suppliers**

- 6.10 A contract for the provision of supplies, services or works where there is only one reasonable source of supply does not require competitive tendering but must be approved by the Director/Head of Service and Executive Director for Resources and is still subject to the Authorisation and Acceptance procedures.

## **Gateway Review Process**

- 6.11 The aim of the Gateway Review Process is to ensure that the larger procurements are appropriately structured and will therefore deliver value for money to the Council. The process applies to:
  - 6.11.1 tenders for supplies and services valued at £144,000 or more; and
  - 6.11.2 tenders for works valued £500,000 or more.
- 6.12 The Gateway Review Process requires the completion of a General Gateway Review form, both for audit purposes as well as to provide a framework and checklist for the procurement process. It also includes two checkpoints:
  - 6.12.1 At the first checkpoint, the proposed contract must be approved by the Executive Director for Resources' Corporate Procurement Team before it may go out to tender and must be subject to consultation with local trade unions. The aim of this is to ensure that procurements are appropriately structured as this preliminary work is critical to the overall success and value for money of the final contract.
  - 6.12.2 Six months after contract award, the Executive Director for Resources' Corporate Procurement Team will verify that a second Gateway Review Check 2 has been carried out by HoS or nominated Contract Officer which assesses the contract management and monitoring arrangements. The aim is to ensure that appropriate structures have been put in place so that the Council receives the services for which it is paying.

## **Financial restrictions on selection procedures**

- 6.13 If the aggregate cost across all Council services in a financial year for either works, supplies or services of a similar type or contracts with a single supplier is expected to exceed £144,000 then an annual or term contract must be established using the appropriate contractor selection procedures detailed in the Procurement Code of Practice unless the relevant Cabinet Member is satisfied that it is inappropriate to use such a procedure and a waiver has been agreed.
- 6.14 The Executive Director for Resources will be responsible for monitoring expenditure by category across the Council to ensure these levels are not exceeded.

## 7 Social Care and Temporary Housing Contracts

- 7.1 These provisions apply only to Social Care and Temporary Housing Contracts. The aim is to enable Directors/Heads of Service to provide their services as efficiently and effectively as possible whilst ensuring that large contracts (greater than £1 million) deliver value for money.
- 7.2 The Authorisation and Acceptance thresholds and tendering requirements for Social Care and Temporary Housing Contracts as set out in the table below.

**Table 7-1: Authorisation and Acceptance thresholds and tendering requirements for Social Care and Temporary Housing contracts**

	Up to £500K	£500K up to £1m	Greater than £1m
<b>Authorisation by:</b>	Pre Authorised through inclusion in Annual Budget or Cabinet Committee	Pre Authorised through inclusion in Annual Budget or Cabinet Committee	Cabinet Committee
<b>Acceptance by:</b>	Director/Head of Service	Director/Head of Service	Delegated Cabinet Member
<b>Tendering requirements</b>	Reasonable means of selection	Five(5) or more written competitive quotations and Gateway Review Form must be followed A minimum 2 quotes must be returned. Less than 2 bids returned then repeat competition	Tendering process required and Gateway Review Process must be followed.

## 8 Receipt and Opening of Tenders

### Non- electronic Tender Process

- 8.1 Contractors must be informed when tenders are invited that their tender will only be considered if:
- 8.1.1 it is contained in a plain inner envelope, securely sealed and self-addressed by the tenderer;
  - 8.1.2 the inner envelope is contained in a plain outer envelope. The outer envelope must be securely sealed, bearing the word "tender" followed by the subject matter of the contract, with closing date and time.

Barnet approved tender envelopes may be obtained from the Executive Director for Resources' Corporate Procurement Team;

8.1.3 the outer envelope should not bear any distinguishing matter indicating the identity of the sender;

8.1.4 the outer envelope is addressed impersonally to:

Executive Director for Resources  
Corporate Procurement Team  
London Borough of Barnet  
Building Four  
North London Business Park  
Oakleigh Road South  
London  
N11 1NP

8.1.5 and, it is delivered by the time stated in the tender invitation.

8.2 Tenders which do not meet the requirements of Contract Procedure Rule 8.1 may only be considered if the other tenders have not yet been opened and:

8.2.1 failure to comply is the Council's fault; or

8.2.2 a tender is late, and it is clear without any contact with the contractor that the tender was sent in such a way that in the normal course of events it would have arrived on time.

8.3 Tenders must be kept safe until the time for their opening by an officer given this duty by the Executive Director of Resources.

8.4 Records of the time and date of receipt of all tenders must be kept by that officer.

8.5 Tenders for a particular contract must be opened at the same time in the presence of two officers appointed by the Executive Director for Resources who have not been involved in the tendering process and who are responsible for properly recording receipt. On opening the tenders, the officers shall:

8.5.1 Number each tender consecutively;

8.5.2 If there are priced bills, schedules of rates or the like, date and photocopy each summary sheet indicating the main contract prices;

8.5.3 Otherwise, date and photocopy each page of the tender that contains prices; and

8.5.4 Complete and sign a schedule or record of tenders received.

- 8.6 The photocopies and schedule or record shall be retained for future inspection.
- 8.7 If a tender is received after the specified time and date then only the outer envelope shall be opened. The inner envelope shall be endorsed with the time and date of receipt , and promptly returned unopened to the tenderer. If there is no suitably addressed inner envelope the tender may be examined but only to the extent necessary to discover the name and address of the tenderer. No details of the tender shall be disclosed and it will be returned promptly to the tenderer.

## **Electronic Tendering & E-Auctions**

- 8.8 At the discretion of the relevant Chief Officer, requests for quotations and invitations to tender may be either issued and/or received by electronic means. In circumstances where the Relevant Chief Officer elects to either issue and/or receive tenders by electronic means the following conditions shall apply:
- 8.8.1 The Corporate Procurement Team will carry out and/or select an accredited tendering vault for eTendering and eAuctions.
- 8.8.2 In the case of eAuctions, its use must be stated in the Contract Notice; and it can only take place after the initial evaluation of tenders

## **9 Post Tender Negotiations**

- 9.1 Where negotiated procedures have not been followed and the Director/Head of Service considers that post tender negotiations would be advantageous to the Council, the Director/Head of Service, in consultation with the Cabinet Member for Policy and Performance, may give authority to proceed. See Procurement Code of Practice for reporting requirements.
- 9.2 Clarification of ambiguous tenders does not constitute post tender negotiations.

## **10 Tender and Contract Details**

### **Tender Contents**

- 10.1 Each tender must contain:

- 10.1.1 an undertaking signed by the tenderer that to the best of their knowledge and belief they have complied with all the relevant provisions of the Health and Safety at Work Act 1974 and regulations made under it;
- 10.1.2 a statement that the tenderer will comply with all current, relevant British Standard Specification or Code of Practice or equivalent European Union or international standards offering guarantees of safety, reliability and fitness for purpose;
- 10.1.3 a statement by the tenderer that they will not try to obtain or receive by whatever means any information which gives or is intended or likely to give the tenderer or another party any unfair advantage over any other tenderer (including the Council's own workforce) in relation to the tendering for and award of any works/services contract;
- 10.1.4 A statement that the Council shall not be liable for expenses incurred in the preparation of tenders; nor shall the Council be bound to accept the lowest or any tenders submitted; nor shall the Council have to give reasons for the rejection of any tender and shall have reserved to them the right to invite fresh tenders should they consider that course desirable.

## **Contract Contents**

- 10.2 Every contract shall contain the following terms:
  - 10.2.1 terms specifying the work, services or supplies in question;
  - 10.2.2 the price or basis of charge (including discounts); and
  - 10.2.3 the time of performance and key performance indicators.
  - 10.2.4 transitional arrangements at the end or earlier termination of the contract .e.g work in progress and costs of transferring ownership of assets, data and records.
  - 10.2.5 the contract management and monitoring plan

## **Conditions applying to all contracts over £25,000 in value or where appropriate to the nature of the contract**

- 10.3 Every contract with a value of £25,000 or more must, unless the Head of Legal and the Chief Finance Officer agree to the contrary, contain clauses to cover the following:
  - 10.3.1 compliance with all legislation;



- 10.3.2 compliance with the Council's insurance requirements;
- 10.3.3 a prohibition on assignment and/or subletting without the written consent of the relevant Director/Head of Service;
- 10.3.4 a provision allowing the Council to cancel the contract and recover any resulting loss from the contractor if the contractor does anything which is contrary to the Prevention of Corruption Acts 1889 to 1916 or incites breach of Section 117 (2) of the Local Government Act 1972;
- 10.3.5 a provision to ensure the Council is protected against the contractor's defective performance by default provisions which are appropriate to the contract;
- 10.3.6 if the contractor is in breach of contract the Council can do any or all of the following
  - 10.3.6.1 determine all or part of the contract or determine the contractor's appointment;
  - 10.3.6.2 itself perform the contract in whole or in part;
  - 10.3.6.3 recover from the contractor any additional cost resulting from the completion or cancellation of the contract.
- 10.3.7 In respect of every contract that is to be performed in stages or over a period of time;
  - 10.3.7.1 the contract shall, where practicable, require the contractor to pay liquidated damages for any default;
  - 10.3.7.2 a sufficient survey (e.g. a bond) shall be taken for due performance unless:
    - the cost of the contract is less than £300,000;
    - following the completion of a risk assessment by the Head of Service, the Chief Finance Officer and the Head of Legal so direct;
    - the contract is with a statutory undertaking.
- 10.3.8 if the contractor is a subsidiary or a member of a group of companies then its parent company or another company in the group whose assets are sufficient shall be required to guarantee performance and indemnify the Council against loss from any default, unless the Chief Finance Officer and the Head of Legal so direct;

- 10.3.9 if the contractor has obtained or received by whatever means any information which gives or is intended or likely to give the contractor any unfair advantage over any other tenderer (including the Council's own workforce) in relation to the tendering for and award of any works/services contract, that the Council shall be entitled to terminate that contract;
- 10.3.10 that the contractor shall be required to make available to the Council or its auditors such documents or access to information or access to the staff/officers of the contractor as is necessary to conduct any audit investigation into the contract;
- 10.3.11 that the contractor shall be required to make available to the Council upon request such information as the Council considers necessary whether in relation to staff or otherwise, to enable the Council to meet its duties in relation to re-tendering the contract.
- 10.3.12 It shall be a condition of the engagement of any person to supervise a Council contract that he or she shall comply in all respects with the requirements of these Contract Procedure Rules.

## **Signing and Sealing of Contracts**

- 10.4 Every contract must be in writing.
- 10.5 Every contract must be in a form approved by the Head of Legal if its cost exceeds £25,000, or where appropriate to the nature of the contract.
- 10.6 The following contracts must be sealed on behalf of the Council:
  - 10.6.1 those whose value exceeds £144,000, unless the Head of Legal directs otherwise; and
  - 10.6.2 those where the Head of Legal so requires.
- 10.7 Contracts not made under seal can be signed by the relevant Director/Head of Service, Chief Executive, Director of Corporate Governance, Head of Legal or any officer authorised by them.
- 10.8 The Head of Legal may require to sign certain contracts.

## **Contract Management and Monitoring**

- 10.9 During the life of the contract Directors/Heads of Service must ensure that systems are in place to manage and monitor contracts in respect of:
  - 10.9.1 contract performance and key performance indicators;

- 10.9.2 compliance with specification and contract;
- 10.9.3 Cost; cross check contract payments to work done or supplies or services supplied;
- 10.9.4 Ensuring continuous improvement and any Best Value requirements;
- 10.9.5 User satisfaction, lessons learned and risk management;
- 10.9.6 eliminating unlawful discrimination and promoting equalities
- 10.9.7 all the above in accordance with any instructions given by the Head of Internal Audit and Ethical Governance.
- 10.9.8 Ensure that a Gateway Review Check 2 is performed 6 months after contract award

## **Contract Payments**

- 10.10 This Procedure Rule applies to contracts which provide for payments to be made in instalments against a certificate indicating partial, staged or final performance against a specification (typically, these are building or engineering contracts using the standard forms). In SAP, this is delivered through Framework Orders (Invoicing Plans) and or Works Orders set to partial rather than periodic payment for building/phased works implementations.
- 10.11 Directors/Heads of Service shall ensure that all amounts due and payments made under such contracts, are recorded against the loaded contracts held in SAP.
- 10.12 Such payments shall be made on provision of a certificate signed by the relevant Director/Head of Service. All payments to contractors on account of contracts shall be made in accordance with the contract and the relevant Director/Head of Service shall provide the Chief Finance Officer with:
  - 10.12.1 details of the total amount of the contract;
  - 10.12.2 the estimated value of work to date and of materials on site;
  - 10.12.3 the amount deducted by way of retention, VAT, liquidated and ascertained damages in respect of unsatisfactory work; and
  - 10.12.4 the amounts previously paid and the amount now due for payment as adjusted for taxation purposes; and
  - 10.12.5 Any sums to be paid after a defects liability period.

## 11 Glossary of Terms

**“Acceptance”** is the approval of the final terms and conditions for the purchase of supplies, services or works.

**“Authorisation”** is the approval required before quotations or tenders for supplies, services or works may be sought.

**“Budget and supporting plans and strategies”** (Budget) is the annually agreed budget and supporting plans and strategies for each Service Area.

**“Director/Head of Service”** as listed in Article 12 of the Constitution.

**“EU”** means European Union.

**“CPT”** means Corporate Procurement Team

**“SAP”** the Council’s on-line system for processing purchase orders & invoices

**“Reasonable means of selection”** – an unbiased selection process based on the relative merits of the quotation provided and taking account of previous purchasing practices for supplies, services or works of a similar type.

**“Quotation”** – this is a priced bid for the provision of a service, supply or works.

**“Tendering”** – this is a formal process for obtaining priced bids for works, supplies or services and which must be followed for procurements above the thresholds set out in Table 6-1. Further details are available in the Procurement Code of Practice.

**“eTendering”** - An electronic tendering solution that facilitates the complete tendering process from the advertising of the requirement through to the placing of the contract. This includes the exchange of all relevant documents in electronic format.

**“eAuction”** is a reverse auction; a repetitive electronic process for the presentation of prices to be revised downwards or of new improved values of quantifiable elements of tenders

**“Single Source of Supply”** contract for which the requirement is so specialised that there is only one supplier.

**“Supply Contracts”** relate to the delivery of products. They include purchase, lease, rental or hire purchase, with or without the option to buy.

**“Services Contracts”** are contracts under which the purchaser engages a contractor (service provider) to provide services.

**“Works Contracts”** are contracts for the carrying out of civil engineering or building works or under which such facilities are provided to meet specific user requirements.

**“Social Care”** refers to:

- Fostering arrangements and the provision of care and support to individuals at home or in settings in partnership with the NHS, voluntary sector organisations and carers;
- The provision of care, support and education to meet the special educational needs of individuals;
- Block contracts securing future capacity for the provision of Social Care (as defined in above).

**“Temporary Housing”** refers to:

- The provision of temporary accommodation to meet the statutory requirements of the Housing Act of 1996 as amended by the Homelessness Act of 2002;
- Block contracts securing future capacity for the provision of Temporary Accommodation (as defined above).

**“Emergency”** where immediate action is needed to protect life or property or to maintain a critical service. Decisions that were not anticipated within the budget or PMP(KPP) but nevertheless relate to everyday business, not major changes/decisions outside the approved budget and 11 statutory plans.

Example: school heating system fails during mid-winter term, or a school roof collapses

**“Urgency”** (not emergency) where urgent action is required but might be delayed by following normal procedures. Decisions that were not anticipated within the budget or PMP(KPP) but nevertheless relate to everyday business, not major changes/decisions outside the approved budget and 11 statutory plans.

Example: school heating system fails at the beginning of the autumn term

**“Framework agreement”** is an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in

particular with regard to price and, where appropriate, the quantity envisaged. In the UK we would know this as a “standing offer to treat”.

“ **Consortia**” means a contracting authority which:

- (a) acquires goods of services intended for one or more contracting authorities;
  - (b) awards public contracts intended for one or more contracting authorities; or
  - (c) concludes framework agreements for work, works, supplies, services intended for on or more contracting authorities;
- otherwise known as “**central purchasing body**”.