



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. Council employees have a duty to report breaches of Contract Procedure Rules to an appropriate senior manager and the AD Finance, Audit and Risk Management
- 1.3 The Contract Procedure Rules provide the governance structure 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 be delivered effectively and efficiently without compromising the Council's ability to influence strategic decisions.
 - 1.3.3 To ensure that the Council is not exposed to unnecessary risk and likelihood of challenge arising from non compliant tendering activity
- 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. Contract Procedure Rules are reviewed as part of the annual Constitutional review of the Council.
- 1.5 Reference should be made to Scheme of Delegation with regard to identifying Head of Service and/or other managers with the right to monitor contracts as delegated by their Director/Assistant
- 1.6 Reference should be made to the Procurement Code of Practice, for

more detailed operational and transactional procurement procedures.

- 1.7 The Director for Commercial Services, in consultation with the Chief Finance Officer and the Head of Legal, shall maintain and issue the Contract Procedure Rules and the Procurement Code of Practice. Any procurement activity shall proceed in accordance with the Contract Procedure Rules and the Procurement Code of Practice.
- 1.8 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 including where funding, such as grant allocation, is received by the Council from external sources. 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 The Procurement Code of Practice may be subject to amendment mid year as appropriate as an operational document. Any such amendment would be subject to authorisation in accordance with the Constitution.
- 2.3 Where the Council is entering into a contract as an agent and/or in collaboration with 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. Where the Council is acting as principal, these Contract Procedure Rules will take precedence.
- 2.4 The Council may adopt different Contract Procedure Rules for schools. This variation is applicable to the Authority's schools who have to abide by the Scheme for Financing Schools which requires them to follow Contract Standing Orders for Schools. This scheme is supported by the School Accountancy Service.
- 2.5 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 15.

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 (additional requirements as scoped in requirement) and any renewals or extensions of the contract.
- 3.2 Directors/Assistant Director must ensure that a pre-tender estimate of anticipated costs is prepared, is in budget and recorded in writing. Where EU Public Procurement rules apply, Directors or Assistant Directors must also ascertain the estimated 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/EU Regulations and UK legislation.
- 3.4 Where the term of the contract length is without fixed length of duration or term which can be defined, in accordance with EU Regulations, Article 9, Clause 6 (b) the value of the contract should be calculated by monthly value of spend multiplied by 48.

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4 Responsibilities of Directors/Assistant Director

- 4.1 Directors and Assistant Director(s) 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 Law, U.K. and EU legislation and Council policy;
 - 4.1.2 to ensure value for money and optimise risk allocation 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, such as the contract forward plan;
- 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 Corporate Procurement Team tender document forms, Tender Review Forms and Contract Monitoring 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 confirmation of uploading onto contract repository;
- 4.1.13 to keep a register of contracts over £5,000, which (1) may be inspected by an officer or member of the Council at any time during office hours, and (2) will support the annual budget review;
- 4.1.14 to ensure effective contract management, contract reviews 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 Director for Commercial Services or Assistant Director Commercial Assurance, 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 supplies, services or works may be sought in accordance with 3.2

- 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/contract forward plan and supporting plans and strategies or any other Cabinet Resource Committee approved plan incorporating procurement activity is deemed as authorised irrespective of value, subject to compliance with contract procedure rule and EU thresholds.
- 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 to proceed with 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 £173,933*	£173,934 to* £499,999	£500,000 and above
Authorisation by: (based on estimated contract value)	Director/Assistant Director (or as defined in Scheme of Delegation)			Cabinet Member	Cabinet Resources Committee
Acceptance** by: (based on actual contract value over the lifetime of the contract)	Director/Assistant Director <u>(or as defined in Scheme of Delegation)</u> Where tender/quotation is lowest or where tender/quotation represents value for money and is the best available option for the Council			Director/Assistant Director <u>(or as defined in Scheme of Delegation)</u> Where tender is lowest price	Cabinet Member Where tender is: a) lowest; or (b) 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/Assistant Director and Cabinet Members are required to consult the Chief Finance Officer in respect to value for money and address risk 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. 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 Corporate Procurement Team (CPT) for the latest threshold set out by EU Regulations as these figures are subject to change.

** With additional European requirement for Indicative Notice thresholds and small lots thresholds. It is recommended that in accordance with good practice Barnet adopts a position that OJEU notices are published for all contracts within 10% of the threshold.

Acceptance Parameters for Contract Additions, Extensions and Variations and Authorisation Parameters for Contract Novations and Assignments

- 5.6 The Acceptance thresholds for contract additions, extensions and variations are as set out in Table 5-2. Contract extensions and variations are, also, subject to the following:
- 5.6.1 In the case of an extension to a contract:
- 5.6.1.1 The initial contract was based on a competitive tender or quotations;
 - 5.6.1.2 the initial contract has not been extended before; and
 - 5.6.1.3 the value of the extension is less than half the cost of the existing contract without the extension and has a budget allocation having had regard to the following:
 - i. If initial contract was subject to EU tender procedure that the extension option was declared within the OJEU notice; acceptance report (Delegated Powers Report/Cabinet Resources Committee Report) and the contract includes extension clauses
 - ii. If initial contract value was subject to sub EU threshold procedure (Barnet tender/ quotation process) the extension does not take the value past EU threshold
- 5.6.2 In the case of a contract variation and in accordance with the terms and conditions of that contract:
- 5.6.2.1 the variation is in accordance with contract clauses
 - 5.6.2.2 variation is notified to and agreed in writing with the contractor in accordance with contract i.e. contract change note as held in schedule of contract or written notification if change note provision not evident;
 - 5.6.2.3 any additional expenditure necessarily incurred does not exceed 10% of the initial contract.

Table 5-2 Acceptance thresholds for contract extensions and variations

Level of Acceptance	Less than £173,933*	Greater than £173,934*
	<p>Director/Assistant Director</p> <p><u>(or as defined in Scheme of Delegation)</u></p> <p>May still authorise and accept the contract but must report afterwards to the relevant Cabinet Member</p>	<p>Cabinet Resources Committee</p> <p>Authority must be sought</p>

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5.6.3 In the case of a contract novation or assignment, the original contract value shall be used to determine the level of authorisation required in accordance with the thresholds for Works, Supplies and Services set out in table 5-1 above.

Urgent/Emergency Procedures & Waiver of Contract Procedure Rules

5.7 Directors/Assistant Directors may take decisions on urgent or emergency matters as set out in the Leader’s Scheme of Delegation providing they report afterwards to the relevant decision making body setting out the reasons for the urgency. Such decisions include waiver of the Contract Procedure Rules where this is justified on the basis of urgency and one or more of the matters set out in 5.8 below.

Waiver of Contract Procedure Rules, where urgent/emergency does not apply

5.8 Except in situations of urgency or emergency (see 5.7 above) the Contract Procedure Rules may only be waived on the decision of Cabinet Resource Committee and only where that Committee is satisfied, after considering a written report by the appropriate officer, that the waiver is justified because:

5.8.1 the nature of the market for the works to be carried out or the supplies 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

5.8.2 the contract is for works, supplies or services that are required

- in circumstances of extreme urgency that could not reasonably have been foreseen; or
- 5.8.3 the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or English Law); or
- 5.8.4 there are other circumstances which are genuinely exceptional
- 5.9 It should be noted inadequate planning and organisation of resources does not give rise to waiving Contract Procedure Rules

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 of a type which is covered by the European procurement regulations (see EU Checklist in the Procurement Code of Practice); and
- 6.1.2 has a total lifetime value above the specified threshold:
- | | |
|---------|--|
| 6.1.2.1 | For Public Works - £4,348,350;
or approximately €5,000,000* |
| 6.1.2.2 | For Public Services - £173,934;
or approximately €200,000 * |
| 6.1.2.3 | For Public Supply - £173,934
or approximately €200,000 * |

*These thresholds are valid from 1st January 2012 to 31st December 2014. They are revised every two years. Please check with CPT for the latest threshold set out by EU Regulation.

- 6.2 So far as 'services' are concerned, the EU procurement regulations split these into 'Part A' and 'Part B' services. Part A services are subject to the full European procurement regime. Part B services are subject to part of the European regulation including advertisement and transparency through use of good practice procurement process. Social care services relating to Adults and Children's Services, special educational needs provision and temporary accommodation housing are likely to be Part B services but this must be confirmed by CPT.

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

Barnet Tender/Quotation Procedures

- 6.4 For those contracts not subject to EU procurement regulations, sub EU Threshold, Part B services and quotations tendering should follow guidance set out in the Procurement Code of Practice.
- 6.5 To offer equality of opportunity, all tender opportunities should be advertised openly. The European Court of Justice has ruled that low value contracts (below the EU thresholds) should be advertised before the contract is awarded. Please note the minimum requirement for advertising is to release a notice through the procurement portal commissioned by the authority which populates ContractFinder.
- 6.6 Thresholds for the tendering of works, supplies and services not subject to EU statutory requirements are set out in the Table 6-1.

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

	Contract Value*					
	less than £24,999*	£25,000 up to £74,999*	£75,000 up to £173,933*	£173,934 up to £499,999*	£500,000 and up to £4,348,349*	£4,348,350* and over
Supplies and Services Contracts	Reasonable means of selection# including budget authorisation and an audit trail #Reasonable means of selection process detailed in Procurement Code of Practice	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 Tender Review Process must be used. May be subject to EU legislation. Less than 2 bids returned then justification must be evident to proceed		
Works Contracts	Reasonable means of selection# #Reasonable means of selection process detailed in Procurement Code of Practice	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 Tender Review Form must be used. Must have minimum 2 returned. Less than 2 bids returned then justification must be evident to proceed	Approved Tendering Process required and Tender Review Process must be used	Subject to EU legislation Tendering process required and Tender 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.

Purchasing through use of consortia/framework arrangements

- 6.7 Consortia arrangements exist to support contracting authority procurement. These type of arrangements include:
- (a) acquiring supplies or services intended for one or more contracting authorities;
 - (b) award of public contracts intended for one or more contracting authorities; or
 - (c) framework agreements for works, supplies, services intended and accessible to one or more contracting authorities in accordance with OJEU notice;

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Consortia arrangements

- 6.8 Consortia Purchasing Arrangements where the Council is the lead contracting authority are subject to these Contract Procedure Rules.
- 6.9 Any other Consortia Purchasing Arrangements are not subject to these Contract Procedure Rules. However, the Council must not enter into Consortia Purchasing Arrangements unless:
- 6.8.1 it has been established that the purchasing arrangements are accessible for the authority to use
 - 6.8.2 the Director of Commercial Services has, in a written report, approved the Consortia;
 - 6.8.3 the relevant Director/Assistant Director has authorised entering into the Consortia Purchasing Arrangement;
 - 6.8.4 the terms and conditions of any proposed Consortia contract and any contract proposed to be made, thereunder, are acceptable to the Head of Legal
- 6.10 Reference should be made to Procurement Code of Practice,

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Framework Agreements

- 6.11 Before promoting the procurement of a new or joining a pre-existing framework agreement, the Director of Commercial Services must be satisfied that such an approach represents the most economically advantageous solution for a service, work, or supply provision and complies with the relevant EU Regulations on the use of such

agreements.

Before procuring or entering into a framework agreement, the Director of Commercial Services shall be satisfied that:

- 6.11.1 the term of the arrangement shall be or is for a period of no longer than four years duration;
 - 6.11.2 the terms and conditions of the arrangement do not compromise the Council's contractual requirements;
 - 6.11.3 the parties to the arrangement are recognised public bodies or providers from the private sector;
 - 6.11.4 full, open and proper competition in respect of the creation of the framework agreement has taken or will take place in accordance with the relevant EU Regulations and/or relevant Contract Procedure Rules;
 - 6.11.5 the framework is to be accessed in accordance with procedures defined by the framework contract owner;
 - 6.11.6 Preference should be given to use of any Government Procurement schemes e.g. Government Procurement Service (GPS), formerly OGC/Buying Solutions.
- 6.12 Reference should be made to Procurement Code of Practice,

Approved Lists of External Providers

- 6.13 External Approved lists may only be used where the Corporate Procurement Team has agreed the use of an external approved list or register for persons to be invited to tender for such contracts.
- 6.14 Every external approved list or agreed register shall:
 - 6.14.1 contain the names of contractors approved for works, services or supplies of that kind;
 - 6.14.2 define whether pre-qualification registration has taken place and if so to what level
 - 6.14.3 confirm that annual review of qualification assurance is undertaken by owner of external approved list
 - 6.14.4 specify the value of contracts and in particular the maximum aggregate value per annum that may be placed with each

contractor.

- 6.15 All decisions about external approved lists or agreed registers must be taken by the Head of the Corporate Procurement Team
- 6.16 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

- 6.17 Where the Director/Assistant Director is satisfied, following the making of suitable investigations, that there is only one supplier in the market for the required supplies/services/works, the competitive tendering provisions will not apply provided that:
 - 6.17.1 the Director/Assistant Director and the Director of Commercial Services approve the entry into the contract with the single provider;
 - 6.17.2 should the the Director/Assistant Director and Director of Commercial Services be one and the same the approval for entry into the contract with a single provider requires Deputy Chief Executive concurrence, and
 - 6.17.3 there is compliance with the Authorisation and Acceptance procedures

Neutral Managed Vendor Services

- 6.19 The Neutral Managed Vendor Service Contract is to be used to secure temporary work placements and interim consultant services. This is an OJEU compliant contract which facilitates access to resources that meet personnel resourcing requirements.

Consultant Services

- 6.20 Consultant services that are not secured through the Neutral Managed Vendor Service contract are to be procured in accordance with authorisation and acceptance thresholds for Works, Supplies and Services as set out in Contract Procedure Rules Table 5 -1.
- 6.21 Consultant contracts that are not secured through the Neutral Managed Vendor Service contract are to be reviewed by Human Resources and Legal Services prior to commitment.
- 6.22 Consultant contracts should be time-limited with review on a quarterly

basis against continued business requirement and value for money prior to any variation in accordance with CPR, Table 5.2.

Tender Review Process

- 6.23 The aim of the Tender Review Process is to ensure that the larger procurements, those service and supply requirements of EU threshold and above and works requirements in excess of £500,000, are appropriately structured and will therefore deliver value for money to the Council. The process applies to:
- 6.23.1 tenders for supplies and services valued at £173,934 or more; and
 - 6.23.2 tenders for works valued at £500,000 or more.
- 6.24 The Tender Review Process requires the completion of a Tender Review form, which will be provided by the Corporate Procurement Team, its completion is required for audit purposes and to provide a checklist for the procurement process. It also includes two checkpoints:
- 6.24.1 At the first checkpoint, the proposed contract must be approved by the Corporate Procurement Team and must be subject to consultation with local trade unions, before it may go out to tender. 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.
 - 6.24.2 Six months after contract award, the Corporate Procurement Team will verify that a second checkpoint, the Contract Monitoring Review Checklist has been completed by Director/Assistant Director or nominated Contract Officer. The aim is to ensure that appropriate structures for contract monitoring and management have been put in place so that the Council receives the services for which it is paying.

Financial Restrictions on Selection Procedures

- 6.25 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 £173,934 then an annual or term contract must be established. The appropriate contractor selection procedures detailed in the Procurement Code of Practice must be

followed unless the relevant Cabinet Member is satisfied that it is inappropriate to use such a procedure and a waiver has been agreed.

- 6.26 The Director of Commercial Services will ensure that expenditure is monitored by category across the Council to ensure these levels are not exceeded.

7 **Part B Services, covering Social Care, Educational and Temporary Housing Contracts**

- 7.1 These specific procedures apply only to Part B service provision of Social Care, Educational/Children's Services and Temporary Housing Contracts that are deemed to be Part B Services. In the first instance, confirmation of Part B Services must be achieved from Corporate Procurement Team before these procedures are used.
- 7.2 These procedures have been defined to enable business as usual in response to the authority's statutory responsibility. They do not however remove the need for transparency and good practice procurement to be undertaken in accordance with authorised service procedure for establishing individual placement agreements; special educational need placements; foster care arrangements and landlord accommodation agreements. The aim is to enable Directors/Assistant Directors to provide their services as efficiently and effectively as possible whilst ensuring that large contracts (greater than £1 million) deliver value for money.
- 7.3 The Authorisation and Acceptance thresholds and tendering requirements for Social Care, Educational/Children's Services and Temporary Housing Contracts are 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 £499,999	£500,000 up to £999,999	Greater than £1m
Authorisation by:	Pre Authorised through inclusion in Annual Budget or Cabinet Committee	Pre Authorised through inclusion in Annual Budget or Cabinet Committee	Cabinet Committee
Acceptance by:	Director/Assistant Director	Director/Assistant Director	Delegated Cabinet Member
Tendering requirements	Reasonable means of selection# see Section 11 'Glossary of Terms'. #Reasonable means of selection process detailed in Procurement Code of Practice	Five(5) or more written competitive quotations and Part B Tender Review Form must be followed A minimum 2 bids must be returned. Less than 2 bids returned then justification must be evident to proceed	Tendering process required and Part B Tender Review Process must be followed.

8 Land, transaction and/or Lease Transaction

- 8.1 Any interest in land, transaction in land and/or lease transaction is excluded from the CPRs but must be authorised in accordance with the requirements set out in the Constitution.

9 Tenders, Quotations and E-Procurement

Electronic Tendering & E-Auctions

- 9.1 At the discretion of the relevant Chief Officer (see table of 'Chief Officers' set out in Article 12 of the Constitution), requests for quotations and invitations to tender may be either issued and/or received by electronic means. The following conditions shall apply:
- 9.1.1. The Corporate Procurement Team confirm that the procurement portal commissioned by the Council is appropriate to delivery the eTendering requirement;
- 9.1.2 If the procurement portal is deemed insufficient then the Corporate Procurement Team will carry out and/or select an accredited tendering vault for eTendering and eAuctions, at a

cost to the service area

- 9.1.3 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 on quality. The eAuction to cover the pricing element of the tender is costed to the service area.

E-tendering process

- 9.2 Quotation and tender processes should be undertaken in accordance with Contract Procedure Rules utilising the tools of the procurement portal commissioned by the Council to deliver e-tendering.
- 9.3 The procurement portal is to be utilised for all procedures in excess of £25,000
- 9.4 The procurement portal document library is to be maintained by Corporate Procurement Team to ensure latest template documents are available for use and attachment to electronic tender/quotations.
- 9.5 Draft contract terms and conditions templates, authorised for use by legal services, are to be held within procurement portal document library for attachment to electronic tender/quotations.
- 9.6 The procurement portal will be used as a scoring tool for evaluation purposes relating to pre-qualification process in multiple stage procurement exercises.
- 9.7 The procurement portal evaluation scoring tool will be adapted as appropriate for single stage procedures and follow-on stages for multiple stage procurement exercises.

Non- electronic Tender Process

The non-electronic tender process should only be used when the procurement portal e-tendering solution is not available. It should be clearly evident that a non-electronic tender process has been undertaken to deliver business continuity due to non-availability of procurement portal.

- 9.8 Contractors must be informed when tenders are invited that their tender will only be considered if:
 - 9.8.1 it is contained in a plain inner envelope, securely sealed and

self-addressed by the tenderer;

9.8.2 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 Corporate Procurement Team;

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

9.8.4 the outer envelope is addressed impersonally to:

Corporate Procurement Team
London Borough of Barnet
North London Business Park
Oakleigh Road South
London
N11 1NP

9.8.5 and, it is delivered by the time stated, 12 noon recommended, in the tender invitation.

9.9 Tenders which do not meet the requirements of Contract Procedure Rule 9.8 may only be considered if the other tenders have not yet been opened and:

9.9.1 The tenderer's failure to comply is due to fault on the part of the Council's; or

9.9.2 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.

9.10 Upon receipt each tender must be marked with date and time of receipt with initials of recipient.

9.11 Tenders must be kept safe until the time for their opening by an officer given this duty by the Director of Commercial Services.

9.12 Tenders for a particular contract must be opened at the same time in the presence of two officers appointed by the Director of Commercial Services who have not been involved in the tendering process and who are responsible for formerly recording receipt on tender receipt log. On opening the tenders, the officers shall:

9.12.1 Number each tender consecutively;

- 9.12.2 If there are priced bills, schedules of rates or the like, date and photocopy each summary sheet indicating the main contract prices;
- 9.12.3 Otherwise, date and photocopy each page of the tender that contains prices; and
- 9.12.4 Complete and sign a schedule or record of tenders received.
- 9.13 The photocopies and schedule or record shall be retained by Corporate Procurement Team for future inspection.
- 9.14 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.

10 Post Tender Clarification

- 10.1 Where restricted/open procedures have been followed and it is evident that post tender clarification would support the Council in evaluation of submission received, the Director/Assistant Director should be informed prior to written clarification being sought. Clarification should only be sought with regard to interpretation of submission received in an "ambiguous tender". It is not to be used for re-submission of tender content.
- 10.2 Clarification of ambiguous tenders, if limited to clarification only, does not constitute post tender negotiations.

11 Tender and Contract Details

Tender Contents

- 11 Each tender must contain:
- 11.1.1 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;

- 11.1.2 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;
- 11.1.3 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;
- 11.1.4 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

- 11.2 Every contract shall have written terms and conditions which shall contain the following terms:
 - 11.2.1 terms and conditions of contract;
 - 11.2.2 terms specifying the work, services or supplies in question;
 - 11.2.3 the price or basis of charge (including discounts); and
 - 11.2.4 the time of performance and key performance indicators.
 - 11.2.5 schedule covering contract variation and/or clause within contract which defines mechanism for variation
 - 11.2.6 transitional arrangements at the end (Exit Strategy) or earlier termination of the contract .e.g work in progress and costs of transferring ownership of assets, data and records.
 - 11.2.7 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

- 11.3 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:
 - 11.3.1 compliance with all legislation;
 - 11.3.2 compliance with the Council's insurance requirements;
 - 11.3.3 a prohibition on assignment/or sub-contracting without the written consent of the relevant Director/Assistant Director, with the exception of a revised threshold defined within the contract if it is deemed that seeking authorisation at £25,000 would prevent business as usual activity;
 - 11.3.4 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;
 - 11.3.5 a provision to ensure the Council is protected against the contractor's defective performance by default provisions which are appropriate to the contract;
 - 11.3.6 provision(s) that if the contractor is in breach of contract the Council can do any or all of the following
 - 11.3.6.1 determine all or part of the contract or determine the contractor's appointment;
 - 11.3.6.2 itself perform the contract in whole or in part;
 - 11.3.6.3 recover from the contractor any additional cost resulting from the completion or cancellation of the contract.
 - 11.3.7 In respect of every contract that is to be performed in stages or over a period of time;
 - 11.3.7.1 the contract shall, where practicable, require the contractor to pay liquidated damages for any default;

11.3.7.2 a sufficient surety (e.g. a bond) shall be taken for due performance unless:

- the cost of the contract is less than £300,000;
- the Director/Assistant Director, the Chief Finance Officer and the Head of Legal so direct following the completion of a risk assessment;
- the contract is with a statutory body

The surety to be highlighted as a draft within the tender documentation which provides transparency to requirement and enables tenderers to respond.

11.3.8 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;

11.3.9 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 supplies/works/services contract, that the Council shall be entitled to terminate that contract;

11.3.10 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;

11.3.11 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.

11.3.12 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.

12 Signing and Sealing of Contracts

12.1 Every contract must be in writing .

12.2 Every contract must be in a form approved by the Head of Legal if its value exceeds £25,000, or where appropriate to the nature of the contract.

12.3 the following contracts must be sealed on behalf of the Council:

12.3.1 those whose value exceeds £173,934, unless:

(i) Individual Placement Agreement /Individual Funding Agreement entered into with providers pursuant to the main 'framework' contract (with respect to individual service users), to be signed (without being sealed) by the respective Director or Assistant Director or a Head of Service for Adults' or Children's services. Provided that the main 'framework' contract with each provider must be sealed; or

(ii) the Head of Legal directs otherwise for contracts not falling within (i) above; and

12.3.2 those where the Head of Legal so requires

12.4 Contracts not made under seal can be signed by the relevant Director/Assistant Director, Chief Executive, Director of Corporate Governance, Head of Legal or any officer authorised by them.

13 Contract Management and Monitoring

13 During the life of the contract Directors/Assistant Directors must ensure that systems are in place to manage and monitor contracts in respect of:

13.1 contract performance and key performance indicators;

13.2 compliance with specification and contract;

13.3 cost; cross check (reconcile) contract payments to work done or supplies or services supplied;

13.4 ensuring continuous improvement and Value for Money is

- achieved;
- 13.5 user satisfaction including mystery shopper/customer satisfaction, lessons learned and risk management;
 - 13.6 eliminating unlawful discrimination and promoting equalities
 - 13.7 all the above in accordance with any instructions given by the Head of Internal Audit and Ethical Governance.
 - 13.8 ensure the contract and associated documents have been uploaded onto Contracts Register, in accordance with Corporate Contracts Register Protocols
 - 13.9 ensuring that a second Contract Monitoring Review Check (see 6.12.2) is performed 6 months after contract award

14 Contract Payments

- 14 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.
- 14.1 Directors/Assistant Directors shall ensure that all amounts due and payments made under such contracts, are recorded against the loaded contracts held in SAP.
- 14.2 Such payments shall be made on provision of a certificate signed by the relevant Director/Assistant Director. All payments to contractors on account of contracts shall be made in accordance with the contract and the relevant Director/Assistant Director shall provide the Chief Finance Officer with:
 - 14.2.1 details of the total amount of the contract;
 - 14.2.2 the estimated value of work to date and of materials on site;
 - 14.2.3 the amount deducted by way of retention, VAT, liquidated and ascertained damages in respect of unsatisfactory work; and
 - 14.2.4 the amounts previously paid and the amount now due for payment as adjusted for taxation purposes; and

14.2.5 Any sums to be paid after a defects liability period.

15 Glossary of Terms

“**Acceptance**” is the approval to proceed with the purchase of supplies, services or works from a particular contractor/provider.

“**Approved List**” applies to Constructionline, CompeteFor and/or another framework contract or consortium list approved in accordance with Contract Procedure Rules

“**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.

“**Consortia**” means an arrangement whereby a contracting authority:

- (a) acquires supplies 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**”.

“**CPT**” means Corporate Procurement Team

“**Director/Assistant Director**” means the officer in accordance with the Constitution/Scheme of Delegation for Directorate who has responsibility for all contracts tendered and let by their service areas including contract monitoring and management once contract is in place

“**e-Tendering**” - 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

“**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 budget plan 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

“EU” means European Union.

“Forward Plan” (also referred to as contract plan) is the register of tenders, contract extensions and variations to be exercised within a financial period with value in excess of £25,000.

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“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”.

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“Low value” means values below £25,000. reasonable means of selection applies.

“OJEU” means the Official Journal of the European Union

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

“Part A Services” – this refers to services in the following table:

Category Reference	Part A Services
1	Maintenance and repair of vehicles and equipment
2	Transport by land, including armoured car services and courier services but not including transport of mail and transport by rail
3	Transport by air but not transport of mail
4	Transport of mail by land, other than by rail and by air
5	Telecommunications services other than voice telephony, telex, radiotelephony paging and satellite services
6	Financial Services: (a) Insurance Services (b) Banking and Investment services other than financial services* in connection with issue, sale, purchase or transfer of securities or other financial instruments, and central bank services
7	Computer and related services
8	R&D services where the benefits accrue exclusively to the purchaser for its use in the conduct of its own affairs and the services are to be wholly paid for by the purchaser

Category Reference	Part A Services
9	Accounting, auditing and book-keeping services
10	Market research and public opinion polling services
11	Management consultancy services and related services, but not arbitration and conciliation services
12	Architectural services Engineering services and integrated engineering services Urban planning and landscape architectural services Related scientific and technical consulting services Technical testing and analysis services
13	Advertising services
14	Building-cleaning services and property management services
15	Publishing and printing services on a fee or contract basis
16	Sewerage and refuse disposal service Sanitation and similar services

“Part B Services” - this refers to services in the following table:

Category Reference	Part B Services
17	Hotel and restaurant services
18	Transport by rail
19	Transport by water
20	Supporting and auxiliary transport services
21	Legal services
22	Personnel placement and supply services
23	Investigation and security services, other than armoured car services
24	Education and vocational education services
25	Health and social services
26	Recreational, cultural and sporting services
27	Other services

“Procurement Portal” – tool commissioned by Council to provide e-tendering i.e.

“P4L” – Procure4London procurement portal

“**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. This process would involve attaining more than one quotation, audit trail of action undertaken and confirmation from Assistant Director that budget is available and rationale for appointment is accepted. Reasonable means of selection process are detailed in the Procurement Code of Practice.

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

“Scheme of Delegation” this refers to Directorate’s Scheme of Delegation

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

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

“**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).

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

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“**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).

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“**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.

“**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 budget plan 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

“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.

“Written report” means either (1) a signed and published Delegated Powers Report which records the decision taken and states clearly the decision maker his/her designation and the date of the decision or (2) A report to a Cabinet Committee and appropriate resolution.