

Procurement Code of Practice

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1. INTRODUCTION

- 1.1 The Procurement Code of Practice (the “Code”) provides guidelines for Council Officers to carry out effective and efficient procurement activities which are compliant with Council Constitution and policies.
- 1.2 The Code provides supplementary information to the Contract Procedure Rules which take precedence over the Code.
- 1.3 Any Council Procurement activity must comply with the Contract Procedure Rules. It is a disciplinary offence to fail to comply with Contract Procedure Rules when undertaking Procurement on behalf of the Council. Council employees, either permanent or temporary, have a duty to report breaches of Contract Procedure Rules to an appropriate senior manager and the Chief internal Auditor.
- 1.4 All Procurement must be undertaken with regard to high standards of probity and in accordance with the relevant sections of the Council’s Constitution. The Council has a commitment to transparency and it is important that the procurement process is as transparent and open as possible.

2. APPLICATION

- 2.1 All Council officers who commission and or procure contracts for supplies, works or services should adhere to the principles and practices set out in the Code and where necessary seek further advice and guidance from Central Procurement. This applies to all persons who commission and or procure contracts on behalf of the Council, such as external consultants or third party service providers.
- 2.2 Council Officers with responsibility for procurement must ensure that they are able to demonstrate achievement of best value by having regard to a combination of economy, efficiency and effectiveness

3. SCOPE

- 3.1 The Code should be followed for all Procurement activities made on behalf of the Council as defined in Section 26 (Definitions) of this Code.
- 3.2 Where the Council is entering into a contract as an agent and or in collaboration with another public body or government department this Code applies only in so far as it is consistent with the requirements of the body concerned. Where the Council is acting as principal this Code will take precedence and other participating authorities should be made aware of the content.

4. COMMERCIAL POLICIES AND PROTOCOLS

There are 10 essentials that **MUST** be followed when carrying out Procurement:

1. **DO** plan your projects ahead to allow enough time for the procurement process, including the drafting and negotiation of contracts.
2. **DO** observe any spend freezes in place by Her Majesty's Treasury and the Department for Communities and Local Government (DCLG.)
3. **DON'T** negotiate on contract terms without guidance and advice from the Central Procurement Team and, where relevant, HB Law (Joint Legal Service).
4. **ALWAYS use Barnet** terms and conditions of contract unless otherwise approved by Central Procurement and HB Law (Joint Legal Services).
5. **ONLY** Central Procurement or HB Law (Joint Legal Service) are authorised to draft and issue contracts, extensions and variations.
6. **DON'T** give verbal or written instructions to start work, or pay suppliers until a Purchase Order has been raised, or a contract signed by all, relevant, parties is in place.
7. Retrospective purchase orders (raised after receipt of invoice) are **NOT ALLOWED**.
8. **ALL** original documentation must be filed and stored in accordance with the council's Records Retention and Disposal Policy and in line with the guidance provided by Central Procurement for each procurement activity.
9. **DON'T** set up new suppliers without Central Procurement approval.
10. **DO** create a contract for any Procurement value over £10,000. A No Contract/No PO/No Pay policy has been introduced and covers any expenditure over £10k unless specifically stated as exempt by the Contract Procedure Rules.

Note that written documentation should be created, recorded and stored for every contractual arrangement, although the documentation may be a PO. Every contractual arrangement must be recorded in writing. Where the value is £10,000 or more the written record must be a formal contract, appropriately executed (signed/sealed) by all relevant, parties.

5. PROCUREMENT ETHICS

- 5.1 Council is committed to demonstrably ethical procurement to make sure standards of conduct by individuals and the organisation generates trust and respect.
- 5.2 Staff conduct must not foster suspicion of any conflict between official duties and private interests. Staff must not accept gifts from existing or prospective suppliers, or show favour or disfavour to any person or organisation. Dealings with suppliers must be honest, fair, transparent and even-handed at all times

6. TRANSPARENCY AGENDA

- 6.1 Government requires greater transparency across all public bodies so that the public can hold organisations and politicians to account. The Public Sector Transparency Board has been established and is chaired by the Cabinet Office Minister. The Board's role includes supporting departments as they deliver the Government's transparency commitments, the procurement aspects of which are:
- To publish all tender documents for contracts over £10,000 on a single website;
 - To publish financial transactions above £500 on a monthly basis;
 - To publish all new contracts in full; and
 - To ensure compliance with all HM Treasury restrictions on procurement
- 6.2 If you have any questions on the transparency agenda in relation to Procurement then discuss these with your Business Partner in Central Procurement. For any other matter regarding transparency you officers should contact the Information Management function.

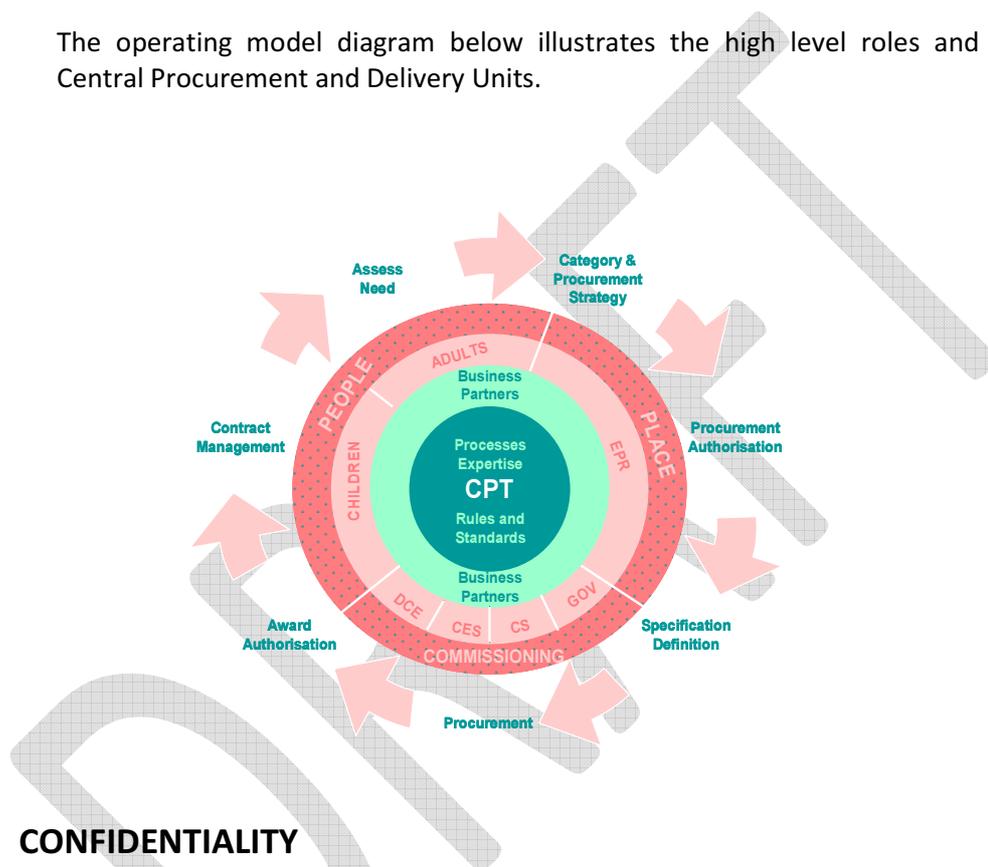
7. AUDIT TRAIL

- 7.1 It is important that staff follow and adhere to the Contract Procurement Rules to ensure probity and value for money for the Council. Under the Contract Procurement Rules, a significant amount of responsibility has been delegated to Council officers.
- 7.2 There must be a clear audit trail in place in all procurement activity. Any decisions on tendering and contract letting must be clearly documented and able to support decisions and, at times, during an audit review.
- 7.3 There are two key elements to the audit trail:
- 7.3.1 All Responsible Officers are required to keep a register of contracts within their delivery area of £5,000 or more. A contract register template can be obtained from Central Procurement; and
 - 7.3.2 A Tender Review Process (see section 15.3 of this Code) which provides additional structure to contracts over £173k in value. Tender Review Forms must be completed for all purchases over £173k these are obtained from Central Procurement.

8. ROLES AND RESPONSIBILITIES

- 8.1 With commissioning at the core of the Council operating model, Procurement activity must provide robust commercial leadership utilising a Category Management approach to create a more strategic view of the Councils Procurement activity.

- 8.2 Central Procurement is responsible for tendering, monitoring and management of all corporate contracts. Examples are contracts for stationery, office furniture and provision of travel services. Central Procurement will consult and liaise with other areas of the Council on such contracts and will manage the procurement process and be responsible and accountable for the performance of the contract.
- 8.3 Where there are two or more Delivery Units involved in the letting of a contract, there must always be a 'Lead' Delivery Unit. The 'Lead' Delivery Unit will have responsibility for the effective, letting and monitoring of the contract with the support of Central Procurement for the tendering process. Central Procurement should be consulted for guidance to determine the Lead Delivery Unit.
- 8.4 The operating model diagram below illustrates the high level roles and responsibilities of Central Procurement and Delivery Units.



9. CONFIDENTIALITY

- 9.1 Whilst the council has a commitment to transparency it is also responsible for ensuring the appropriate confidentiality and viability of its procurement. Unless directed or required under legislation officers should consider the procurement process and information supplied by bidders to be confidential.

10. LEAN PROCUREMENT

- 10.1 Central Procurement will use LEAN sourcing principles to speed up the procurement process and reduce costs for all involved for all OJEU (above threshold) procurements.
- 10.2 Under LEAN there is a requirement to carry out significant levels of pre-procurement market engagement with diverse range of prospective suppliers, including SME's in order to warm up

the market, test current thinking and generate ideas for innovation as part of the development of outcome-based specifications.

- 10.3 Central Procurement will provide advice and guidance on delivering OJEU procurement along LEAN principles

11. ASSESSING NEED

11.1 PROCUREMENT FORWARD PLAN

- 11.1.1 The Procurement Forward Plan provides the detail of planned contract based procurement activity for approval by the Cabinet Resources Committee. Such approval will provide the Procurement Authorisation required in Section 13 below.
- 11.1.2 The Procurement Forward Plan is produced annually in October and covers the planned contract procurement activity for the following financial year.
- 11.1.3 Central Procurement is responsible for providing the template to Responsible Officers, validating responses and publishing a report for Cabinet Resources Committee approval.
- 11.1.4 Central Procurement using the Procurement Forward Plan will work in partnership with Responsible Officers to develop category strategies, manage resources and identify and agree projected savings targets for each activity that will deliver value for money outcomes to the benefit of the Council.

12. CATEGORY & PROCUREMENT STRATEGY

12.1 MARKET TESTING

- 12.1.1 Market Testing is the process of researching and understanding the market maturity, opportunity, levels of interest and potential solutions so as to inform the procurement strategy options and likely contract values required for the authorisation process.
- 12.1.2 Central Procurement must be consulted on market testing tools and techniques to ensure the Council does not contravene any Procurement regulations or jeopardise a future Procurement process.
- 12.1.3 Central Procurement must be involved in the design, set-up and implementation of any market testing activity.

12.2 AGGREGATION AND DISAGGREGATION

- 12.2.1 Category Management involves the aggregation of spend by service or product category so that Value for Money is optimised following procurement.
- 12.2.2 Category Management requires spend analysis across all Delivery units for Goods and Services which are similar in nature and can be bundled together, and forms the basis for the Procurement Strategy.
- 12.2.3 This approach will help to ensure that the Council will comply with CPRs and OJEU limits when procuring Goods and Services across the Council.

12.2.4 Disaggregation is where the procurement of Goods and Services is unbundled or fragmented into smaller lot sizes or unduly short contract time frames. This activity may result in the Council not achieving Value for Money and being exposed to unnecessary risk and liability because of the avoidance of higher Contract Procurement Rule thresholds and is not permitted.

12.3 THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012

12.3.1 The Act requires commissioners and procurers at the pre-procurement stage to consider how what is to be procured may improve social, environmental and economic well-being of the relevant area. Central Procurement will provide advice and guidance on implementing the Act on all procurement activity in which the Public Contracts Regulations 2006 apply.

13. PROCUREMENT AUTHORISATION

13.1 Authorisation for any procurement to commence must be completed as set out in the Contract Procedure Rules.

14. SPECIFICATION DEVELOPMENT

14.1 SPECIFICATION WRITING

14.1.1 The specification is a key procurement document and will form the basis of the supplier evaluation process with which the successful supplier will be chosen. The specification is incorporated into the supply contract setting out what the supplier will deliver and how success will be measured.

14.1.2 A specification can be defined as "a statement of needs to be satisfied by the procurement of external resources". It is also known as an operational requirement, statement of requirement, statement of service requirement or statement of work.

14.1.3 It is recommended that an output or outcome-based specification is used wherever possible.

14.1.4 A full and approved specification will be required before engaging the market and commencing the tender process.

14.1.5 Refer to Central Procurement for training and guidance on writing a specification.

14.2 GUIDELINES FOR CREATING A SPECIFICATION

- state the requirement specification completely, clearly, concisely, logically and unambiguously;
- focus on outputs not how they are to be met;

- include enough information for potential suppliers to decide and cost the goods or services they will offer, or in the case of negotiated route arrive at realistic budgetary costs;
- permit delivered goods or services to be evaluated against defined objective criteria by examination, trial, test or documentation;
- state the criteria for acceptance by examination, trial, test or documentation;
- contain only the essential features or characteristics of the requirement;
- be non-discriminatory and provide equal opportunity for all potential suppliers within the EU to offer a product or service which satisfies the needs of the user and which may incorporate alternative technical solutions; and comply with any legal obligations e.g. under UK law, the EEC Treaty, an EC Directive or the GATT Agreement on Government procurement.

14.2.1 As a general rule the specification should be developed from a statement of the business requirements created during the preparation of the business case.

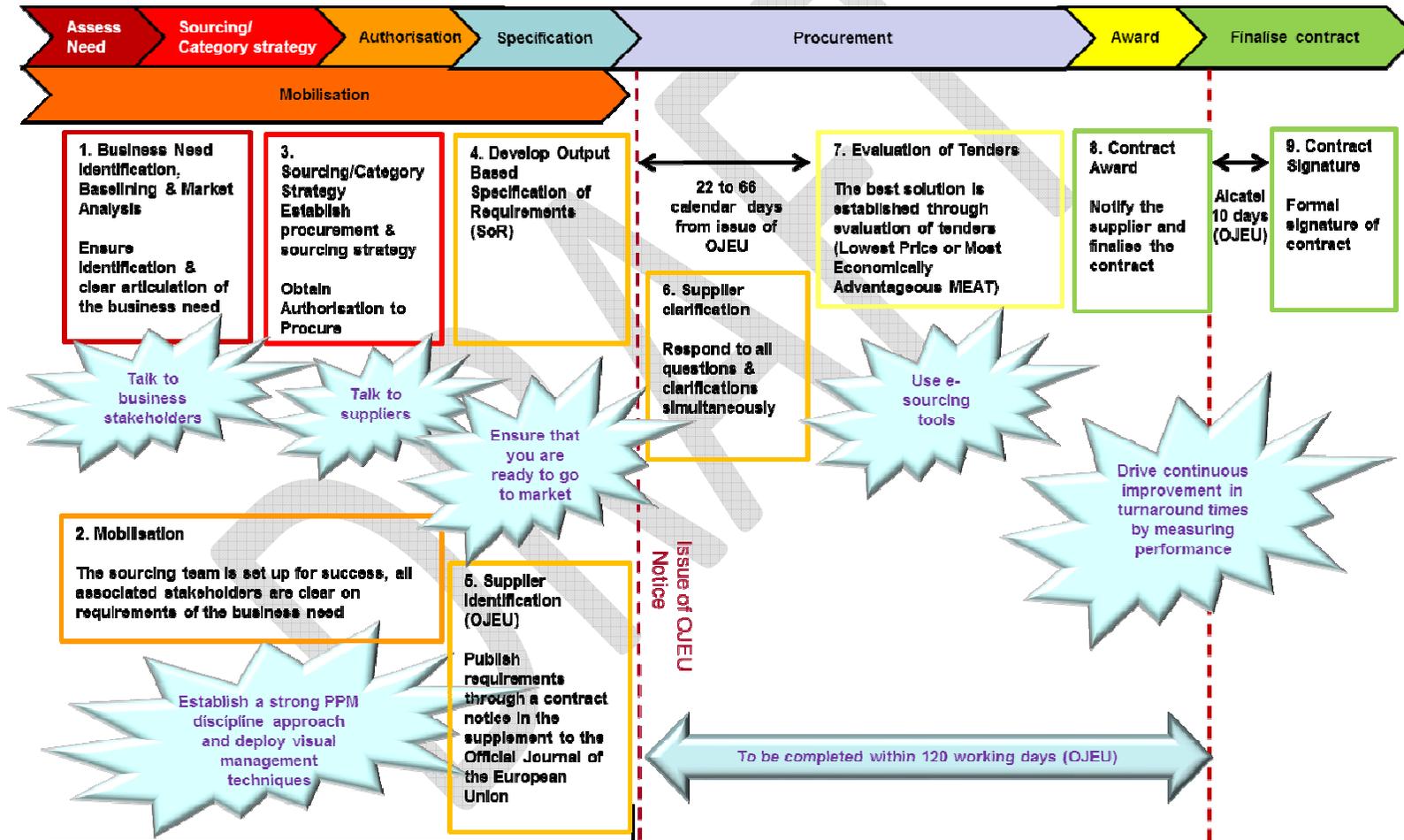
14.2.2 The requirement may be refined in consultation with suppliers as part of market testing or after the supplier selection stage. This can be particularly useful where innovative solutions are being considered. This should be managed with great care and integrity to avoid contravening procurement regulations and should only be done in partnership with Central Procurement.

14.2.3 The specification is prepared by the Responsible Area in the first instance. Central Procurement will review the specification and support the team to produce the final agreed specification. It is extremely important to ensure that the specification delivers the requirements needed, for large scale projects and it is good practice to have the input of stakeholders and suppliers..

15. PROCUREMENT

15.1 PROCUREMENT PROCESS

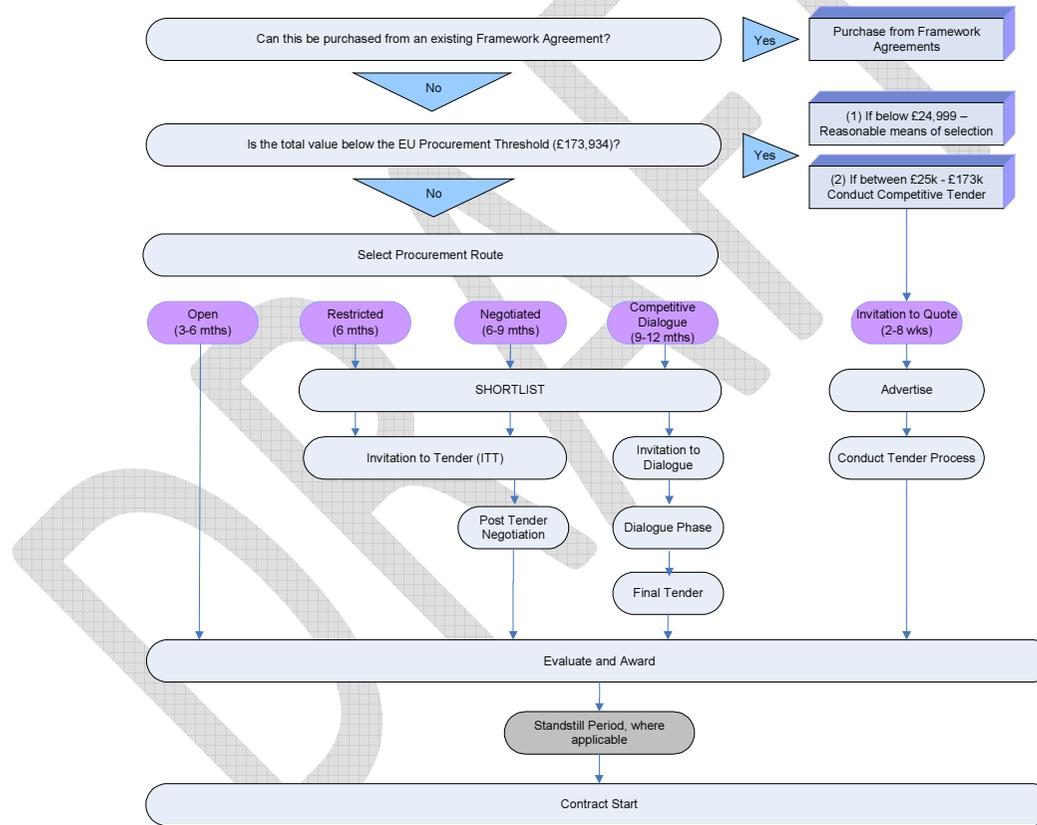
The Procurement process is an integral part of Commissioning. The key stages are:



15.2 PROCUREMENT ROUTE MAP

The diagram below identifies the available routes dependent on contract value. The timeframe for each is subject to approval of the procurement strategy, approval of specification and approved contract form.

Please note that where the 'Negotiated' procedure is being used, references are, normally to 'Invitation to Negotiation (ITN)'. Also, are the time estimates, perhaps, a little optimistic? e.g. competitive dialogue: I would think that the minimum would be 12 months, rather than 9 months



15.3 TENDER REVIEW PROCESS

15.3.1 All tenders for services or supplies valued at £173,934 or more, or tenders or quotations for works greater than £500,000 are subject to two compulsory Tender Review checkpoints.

15.3.2 The aim of the Tender Review checks is to quality assure procurements before tenders are sought and to ensure appropriate contract monitoring arrangements are in place post contract award. The checkpoints are as follows:

- At Tender Review the proposed procurement and options appraisal must be approved by the Central Procurement and where appropriate Union agreement obtained before going to public notice;
- At Contract Monitoring Review the contract monitoring arrangements are reviewed by the Central Procurement Team six months after contract award.

15.3.3 Tender Review Forms will be supplied and must be completed prior to submission to Central Procurement for all contracts valued at £173,934 or more. The aim of the Tender Review Forms is:

- to assist Delivery Units by setting out the process to be followed for the tender processes
- to ensure that appropriate preparation is undertaken for large procurements, including provision of options appraisal;
- to provide an audit trail for procurements; and
- to enable Central Procurement to retain an oversight of all large procurements being carried out by the Authority

15.3.4 There are two Tender Review forms to be used depending on the stage of the contract. Both forms are obtainable from Central Procurement:

- Tenders for works, supplies and services contracts valued at £173,934 or more must be accompanied by the Tender Review Form;
- Tenders for Part B Services, including Social Care, Education and Temporary Housing contracts valued at £500,000 or more must be accompanied by the relevant Part B Service Tender Review Form.

15.4 WORKING WITH OTHER BOROUGHES (consortia procurement)

15.4.1 Procurement of works, supplies or services through an existing Consortium may be approved by the relevant Head of Service if:

- The Consortium has been previously approved by the Commercial Lead;
- The terms and conditions of any proposed contract have been approved by HB Law (the Joint Legal Service);

15.4.2 An Information Sharing Agreement may be required even for an existing Consortium. Please refer to the Information Management Team for advice.

15.5 EXTERNAL APPROVED LISTS

- 15.5.1 External Approved lists may only be used where the Head of Central Procurement has agreed the use of an external approved list or register for persons to be invited to tender for such contracts.
- 15.5.2 At least five persons (organisations) from the Approved List must be invited to tender. The relevant Head of Service shall authorise a suitably experienced officer to select those to be invited to tender.
- 15.5.3 Only persons selected from the list or the in-house service may be invited to tender, except that in relevant cases persons proposed by a recognised tenants association or by any other body with equivalent rights may also be selected.
- 15.5.4 The relevant Head of Service shall record the details of the selection process as part of the procurement process. This information should be captured in a Tender Review form where applicable. The information must include the name of each contractor selected and the reason for choosing that contractor, e.g. random selection, proven quality or value for money.

15.6 CONSULTANT SERVICES

- 15.6.1 Procurement of Consultancy contracts must have pre-procurement approval from the Commercial Lead, Human Resources and HB Law (Joint Legal Service).
- 15.6.2 Central Procurement must be involved in procuring any consultancy/professional services contracts. In any event Consultant contracts must be time-limited and project limited with review against continued business requirement and value delivered. The Commercial Lead must approve any contract variation.

15.7 SINGLE TENDER ACTION

- 15.7.1 Single Tender Action (STA) is the awarding of a contract to a single party without undertaking a competitive tendering exercise. Single Tender Actions are permitted under the EU Procurement Directives in the following, exceptional circumstances:
- Technical Reasons – only one enterprise has the expertise to do the work.
 - Exclusive Rights – only one party can perform the contract due to intellectual/industrial property rights e.g. patents/trademarks or copyright.
 - Artistic Reasons – engaging an artist or performer.
 - Consultancy Services – follow up work to complete the assignment previously awarded on a competitive tendering exercise; see guidance on aggregation rules.
- 15.7.2 The burden of proving that STA is justified rests with the responsible officer awarding the contract, but Central Procurement can advise whether the Single Tender justification fits within the four exceptions noted above.
- 15.7.3 Single Tender Action is not permitted in the following circumstances:
- time constraints through poor project planning;

- previous relationships with suppliers;
- to avoid the competitive tendering exercise.

15.7.4 The Commercial Lead must approve all STA requests.

15.8 E-TENDERING AND E-AUCTIONS

15.8.1 All tenders above £10k must go through LBB approved e-tendering or e-auction systems. Central Procurement will control and manage all electronic tenders and auctions to ensure the integrity and electronic security of the process.

15.9 TENDER MONITORING PROCESS

15.9.1 All tenders or quotations of £10,000 or more must have a contract number which can be obtained by entering the contract details into Central Procurement tender and contract database. This may be done by contacting the officer assigned to your service in Central Procurement who has access to the database.

15.9.2 The aim of the contract number is to enable contracts to be tracked throughout their life cycle, from tender development through to contract award and finally contract re-letting.

15.10 RECEIPT AND OPENING OF TENDERS

15.10.1 Central Procurement will manage the receipt, opening and recording of all tenders.

15.11 TENDER EVALUATION

15.11.1 All tenders must be evaluated in accordance with either Lowest Price or Most Economically Advantageous Tender (MEAT). The criteria for award must be included in the published tender document

15.11.2 All tenders above £10k must be evaluated independently by at least 2 individuals. Central Procurement will advise on the tender evaluation process for contracts over £10k.

15.11.3 Evaluators must record their individual comments prior to the consensus meeting. Summary comments must be recorded at the consensus meeting and kept on file. These will be used to support the debriefing exercise

15.12 FINANCIAL EVALUATION OF SUPPLIERS

15.12.1 If: (a) the cost of a contract is expected to exceed £173,934 or more for supplies or services or £500,000 for works or:
(b) the contract is considered to have significant impact on the local community, then contractors must be subject to a financial evaluation as part of the selection process.

15.12.2 This evaluation should be undertaken by:

- Central Procurement if the contract is valued at less than £173,934 for supplies or services or less than £500,000 for works or the contract is considered to have significant impact on the local community;
- A financial officer as delegated by the Chief Finance Officer if: (a) the contract is valued at £173,934 or more, for supplies or services; or (b) the contract is valued at £500,00, or more for works; or (c) the contract is considered to have significant impact on the local community.

In both cases the financial evaluation must be completed within in a period not exceeding two weeks.

15.13 RECORDS MANAGEMENT

15.13.1 Comprehensive records of every purchase, must be kept in accordance with the council' Records Retention and Disposal Policy.

15.13.2 For tenders, contracts and framework agreements, all original written procurement documentation must be managed and stored by the Delivery Unit/area of responsibility. This includes tenders; contract requisition forms; specifications; data protection due diligence evidence; tender packs; supplier correspondence; contracts; service level agreements; contract variations; contract extensions, and termination letters.

15.13.3 For work carried out under a purchase order, supporting documentation must be given to Finance either electronically or in hard copy.

15.14 POST TENDER CLARIFICATION

15.14.1 Any post-tender clarification must be based on the tender submission received and approval must be sought from Central Procurement before proceeding.

Note that in the case of European procurements there is a mandatory requirement to provide bidders with certain, specified, information (see section 19, below)

15.15 DEBRIEFING SUPPLIERS

15.15.1 Debriefing gives bidders feedback on the quality of their response and the reason they did or didn't get selected. It is carried out at the bidder's request, following a pre-qualification or tender exercise. Debriefing is an important and integral part of good procurement practice because it provides a useful learning tool for you and the bidder.

15.15.2 The objective is to provide positive and constructive feedback on the bidder's response, together with an opportunity to understand the evaluation process. It is aimed to assist bidders to improve their performance in future procurement exercises.

15.15.3 Key requirements for debriefing:

- Debriefing must be conducted at the request of an unsuccessful bidder.
 - Debriefing successful bidders is good practice and should be encouraged wherever possible.
 - 'Unsuccessful Bidder' letters should always include an invitation to bidders to attend a debrief meeting.
 - Debriefing should always be undertaken with caution and must be planned thoroughly.
 - Debriefing should be face-to-face interview with senior representatives of the bidder, and any other form of debrief, such as by telephone, must be undertaken by a commercial adviser only.
 - Ideally the Debrief team should include someone from the evaluation team and a commercial advisor from Central Procurement.
 - The timetable should enable debriefing of unsuccessful suppliers prior to contract signature.
- 15.15.4 If subject to the EU procurement regulations, debriefing must take place at least three days before the end of the standstill period if requested by midnight of the second working day following contract award notification, or otherwise within 15 days of receipt of a request from an unsuccessful bidder.

16. INFORMATION GOVERNANCE

- 16.1 As stated in the Contract Procedure Rules, the council must carry out due diligence checks in the area of information governance. External contractors do not necessarily need to comply with the council's own information governance policies, but it is important that they follow procedures that are at least the same standards as the council's. We may require contractors to abide by the council's policies if they are using council equipment. As part of the due diligence process the contractor's information governance policies need to be checked by the officer undertaking the procurement to ensure they are (or an assurance obtained that they will be amended to be) at least equal to the council's standards in terms of compliance with the relevant data security legislation.
- 16.2 All contracts entered into on behalf of the Council may be subject to disclosure under the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004 ("EIR"). A contract clause cannot exclude the contract from the council's responsibilities under FOIA.
- 16.3 Information belonging to the council but held by a contractor on the council's behalf may be subject to disclosure under the Freedom of Information Act 2000. A contract clause cannot remove this responsibilities under FOIA
- 16.4 PRE-CONTRACTUAL CHECKS
- 16.4.1 There is an obligation under the Data Protection Act 1998 (the Act) to undertake pre-contractual checks on the contractor. The Act deals with the processing of personal data. i.e. information which relates to a living, identifiable individual, which includes names, address, date of birth etc. Whilst there may be some contracts that do not include the processing of personal data, the vast majority of Barnet's contracts will include the processing of personal data by the contractor on the council's behalf. The

contractor will be the “Data Processor” and the council the “Data Controller”. It is a requirement of the Act for Barnet as Data Controller to ensure that the Data Processor provides sufficient guarantees concerning its technical and organisational security measures which govern the processing to be undertaken.

- 16.4.2 The contract manager should make enquiries with the potential Data Processor and should take account of the responses to these enquiries as part of the procurement process when choosing a provider. Copies of letters and documentation should be retained as evidence in the event of a data protection audit or if an incident occurs and they are required by the Information Commissioner.
- 16.4.3 The data security systems and risk assessment procedures of the Data Processor have been thoroughly tested and meet the required standards of the Council’s Information Governance policy
- 16.4.4 Both physical and electronic measures must be covered, as well as provision for training and staff verification. As a minimum, copies of appropriate information security policies and procedures must be obtained.

16.5 ONGOING CHECKS

- 16.5.1 Regular monitoring of information security policies of the Data Processor should be undertaken and the results retained, together with any communications between the council and the Data Processor concerning improvements or amendments required to their processes or systems. The frequency of monitoring would be dependent on nature of data being processed and the circumstances of the contract.

17. DATA PROTECTION CONTRACT PROVISIONS

17.1 The Data Protection Act 1998 Compliance Toolkit provides full details and checklists

- 17.1.1 All contract terms for Data Processing services must be approved by an Information Governance Officer from the councils Information Management Team;
- 17.1.2 Contracts for Data Processors must state that they will only act on the instructions of the Data Controller.
- 17.1.3 Contracts must state that the Data Processor is required to comply with obligations equivalent to those imposed on a Data Controller by the 7th Data Protection Principle of the Act.
- 17.1.4 The contract must include the right to make reasonable spot checks on the Data Processor’s information security measures and the Council must not engage any Data Processor who refuses such access.
- 17.1.5 Contract contains performance monitoring to ensure that the Data Processor continues to meet these standards throughout the life of the contract and beyond if necessary.
- 17.1.6 Clauses should be included in the contract that cover the provision of information from the contractor to the council to enable it to comply with its statutory duties

under the Freedom of Information Act 2000, Data Protection Act 1998 and other legislation.

17.1.7 If there are any queries about the applicability of information governance requirements to the contract, specialist advice should be sought from the council's Information Management team.

17.1.8 The contract should contain provision to ensure that the Council is immediately notified of any data security incident involving Council data.

17.2 SUB-PROCESSORS

17.2.1 Any sub-contracting undertaken by a Data Processor must further bind any sub-contractor to comply with the same terms as those to which the contractor is required to comply with under the main contract.

17.3 EXIT ARRANGEMENTS

17.3.1 The contract exit arrangements must include provisions that cover the managed return or secure deletion of the Council's data.

17.4 EXISTING ARRANGEMENTS

17.4.1 All existing contractual arrangements should be reviewed to ensure they are in line with Data Protection Act requirements.

18. CONTRACT DETAILS

18.1 All contracts should use Council standard Terms and Conditions. Any changes to these must be approved by Central Procurement and HB Law (Joint Legal Service) prior to signature.

19. FRAMEWORK AGREEMENTS

19.1.1 Following calls for competition under the Open, Restricted, Competitive Dialogue or Negotiated Procedures, a purchaser may conclude a Framework Agreement with economic operators. Having established the Framework Agreement in accordance with the rules detailed under Contract Procedure Rules, purchasers may award specific contracts to the economic operator's party to the agreement.

19.1.2 For purposes of the rules, Framework Agreements are broken down into two categories:

- A single supplier framework: call offs/specific contracts are awarded without further competition but they should remain within the limits of the terms laid down in the framework agreement

- A multi supplier framework must contain at least three (3) suppliers. Call off contracts can be awarded either:
 - a. by application of the terms set out in the agreement itself; or
 - b. where not all the terms are set out in the framework agreement, by mini competition

19.1.3 Rules applicable to both types of Framework Agreements:

- The terms may not exceed four years
- When awarding contracts based on a Framework Agreement the parties must not make substantial amendments to the terms laid down in that agreement.

19.1.4 Additional rules applicable to Framework Agreement mini competitions:

- consult in writing all the economic operators capable of performing the proposed call-off contract;
- fix a time limit for the receipt of mini competition quotations which takes into account factors such as the complexity of the subject matter of the contract and the time needed to send in tenders;
- keep each mini competition quotation unopened and in a secure location until the expiry of the time limit for the receipt of tenders; and
- award each contract to the contractor that has submitted the best offer on the basis of the award criteria, which is in accordance with framework evaluation criteria
- of call-offs based on mini competitions above the threshold value (EU Public Procurement threshold applicable at the time) is subject to a 10 day standstill period, appropriate "Alcatel" letters to be released.

19.1.5 For framework agreements, the mandatory standstill period applies at the stage at which a framework agreement itself is awarded, but not during subsequent call-offs or mini-competitions within framework agreements. It is best practice to have a standstill period during the call-off stage, if possible.

20. CONTRACT AWARD

20.1 For all procurements, you must keep the supplier, contractor or service provider informed about the award of the contract.

20.2 This must be done in writing by the quickest means available, as soon as possible after the award decision has been made, and include details of:

- the award criteria
- the score of both the, relevant, unsuccessful tenderer and the successful party

- the name of the winning tenderer
- 20.3 At least 10 days must be allowed between the date of despatch of this information (known as 'notice of award'), and the date on which the new contract starts or framework agreement concludes ("Standstill Period").
- 20.4 A supplier that has been sent a notice of award may request an accelerated debrief. If this is received *in writing* by midnight of the second working day of the standstill period, you must provide this information at least three full working days before the end of the standstill period.
- 20.5 Where this is not possible, the standstill period must be extended to allow at least three working days between the feedback and the date LBB proposes to enter into the contract.
- 20.6 Council must provide a debrief within 15 days of receipt of the request, if a request for feedback is received outside of the accelerated time limit. There is no need to extend the standstill period in these circumstances
- 20.7 For further guidance please speak to Central Procurement.

21. CONTRACT MANAGEMENT

- 21.1 Directors, Assistant Directors, Lead Commissioners and Heads of Service are responsible for ensuring contract management and monitoring activities are carried out in accordance with the Contract Procedure Rules. Contract Management and Monitoring is required for all contracts. Contracts in excess of £10,000 require completion of a Contract Monitor Review Form and inclusion on the Corporate contract performance review register.
- 21.2 Contract management activities can be broadly grouped into the following areas:
- **Service delivery management:** ensures that the service is being delivered as agreed, to the required level of performance and quality.
 - **Relationship management:** is ensured through regular contract monitoring meetings which keep the relationship between the two parties open and constructive.
 - **Contract administration:** handles the formal governance of the contract and changes to the contract documentation. Performance against contract standards must be monitored and recorded on a regular basis proportionate to the risk and value of the contract.
 - **Contract Dispute:** Guidance must be sought from Central Procurement and or Joint Legal Services.
- 21.3 Contract monitoring is a key part of contract management which must be carried out during the lifetime of a contract to ensure an efficient, relevant, productive service.
- 21.4 Effective monitoring of contracts will ensure that all those who are responsible for contract management in the council regularly and accurately assess the performance of goods, works

and service providers. This will allow the right management information to be available to make operational and strategic decisions

21.5 Management Information reporting and/or access should be built into the contract and arrangements should be in place to deal with the results of that self-monitoring information. The views of service users should be reported and acted upon where appropriate.

21.6 It is essential that contract monitoring clauses are built into the contract and that both parties are clear about what is expected in terms of performance prior to the contract starting.

21.7 A contract performance review register should be developed for all contracts and should be completed on a quarterly basis. The schedule should set up to calculate an overall score / percentage. In addition to quarterly reports an end of year report should be compiled for each contract.

22. CONTRACT TERMINATION, NOVATION or ASSIGNMENT

Contract termination, novation, assignment or transfer may only be completed by Central Procurement who will work with HB Law (Joint Legal Service) to ensure correct legal procedure is followed. To terminate a contract please contact Central Procurement to complete a Termination Request form.

23. NEW SUPPLIER

23.1 New vendors will only be set up following an approved procurement exercise. It is strictly prohibited to request a new vendor after receipt of an invoice. Any new vendor request must be made using the approved form and must clearly state the reason. Central Procurement may reject a new supplier if a current contract/framework has not been used and/or a properly managed procurement process has not been undertaken.

24. PURCHASE ORDERS

24.1 Each order must be issued using Council approved Purchase order system, with the exception of requirements released through the SWIFT application utilised by Children's Services and Adult Social Services.

24.2 A purchase order must not be placed for supplies or services unless the Head of Service concerned is satisfied by quotation or otherwise that the price obtained is the best available in the circumstances.

24.3 Verbal orders must not be issued. In the event of a true emergency a verbal order may be given and must be confirmed by an official order within 24 working hours.

24.4 Official orders shall be issued for all supplies, works and services required by the Council, with the exception of:

- contracts under seal or documented by the Head of Legal/Director of HB Law (joint Legal Service) which do not require subsequent orders to be placed;
- gas, water, electricity, telephones, periodical payments and annual subscriptions;
- cash purchases properly defrayed from loan accounts or advances from petty cash;
- variation of works included in formal contracts, and authorised by the issue of variation orders; and
- such other items as may be specifically agreed by the appropriate responsible officer with the Chief Finance Officer.

24.5 The responsible officer must ensure that suppliers, services or works are receipted on the Council's Accounting System against the purchase order promptly. For Corporate Contracts where two-way matching has been agreed then goods receipting will not be required. Confirmation of contracts to which two-way matching applies can be provided by CPT. The supplier must be notified immediately of any discrepancy including quality and compliance with specification or purchase order.

24.6 Returnable packages and containers shall be returned to the suppliers and the charge for them deleted from the invoices. In special circumstances where trade custom or other exceptional circumstances demand that payment be made, as far as practicable account must be kept by the appropriate department of the packages or containers to be paid for, and credit obtained on their return or the appropriate account of the Council be debited where they are used for council purposes.

25. PURCHASING CARDS

25.1 Council approved Purchasing cards may be used for low value infrequent purchases not covered by a formal contract or purchase order.

25.2 Central Procurement own the process and policy for use of Purchase cards and should be contacted to obtain further information on obtaining a Purchasing card and authorised use of Purchasing cards.

26. DEFINITIONS

“Acceptance” is the authorisation to enter into a contract with a particular supplier(s) on the terms, conditions and at the price(s) as set out in the contract documents.

“Authorisation” is the approval required to enable any Procurement to occur.

“Central Procurement” is the Councils procurement function.

“Contract” means a formal written agreement between the Council and the provider of any goods, services or works, including Terms and Conditions as approved by Joint Legal Services.

“Data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed.

“Data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller.

“Exemptions List” is the list of services, goods or works as approved by the Commercial Lead and which are exempt from the Contract Procedure Rules. The Exemptions List is maintained by Central Procurement and published alongside the CPRs and the Code of Practice.

“EU” means European Union.

“Framework agreement” is an agreement between: (1) one or more contracting authorities; and (2) 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.”

“Non-Procurement” expenditure applies where the Council has to pay for a Service which it did not initiate or are contained within the Exemptions list duly authorised by the Commercial Lead.

“OJEU” means the Official Journal of the European Union.

“Personal data” means data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

“Procurement” means any activity which includes the identification of need, options appraisal and the execution of a competitive selection process, quotation or tendering process.

“Procurement Forward Plan” means the annual report compiled by the Council setting out their planned contractual Procurements for the forthcoming financial year and submitted to the Cabinet Resources Committee for authorisation.

“Purchase” means the activity which uses a mechanism to undertake Procurement under the Council’s standard terms and conditions (Purchase Card or Purchase Order) or against an accepted contract.

“Quotation” means a priced bid for the provision of goods, a service, or supply of works.