



# Contract Procedure Rules

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## 1 INTRODUCTION

- 1.1 Procurement decisions are among the most important decisions a manager makes because the money involved is public money and the Council is concerned to ensure that as a minimum high quality supplies, works and services are provided in a timely manner. Effective and efficient use of resources in order to achieve best value is a legal duty. The Council's reputation is also important and should be safe guarded from any suggestion of dishonesty, corruption or failure to meet legal responsibilities.
- 1.2 Any Procurement activity must comply with the Law, these Contract Procedure Rules, Council policy, and the Constitution. It is a disciplinary offence to fail to comply with Contract Procedure Rules when undertaking Procurement on behalf of the Council. Council employees and third party service providers have a duty to report breaches of Contract Procedure Rules to an appropriate senior manager for action and the Chief Internal Auditor for noting.
- 1.3 All Procurement must be undertaken with regard to high standards of probity. The Council has a commitment to transparency and it is important that the Procurement process is as transparent and open as possible.
- 1.4 These Contract Procedure Rules are to be read in conjunction with the Public Contracts Regulations 2015, The Concession Contracts Regulations 2016, Cabinet Office Procurement Policy Notes and the Council's Officer Code of Conduct.

## 2 APPLICATION

- 2.1 The Contract Procedure Rules provide the governance structure within which the Council may procure works, supplies and services. The aims of these rules are to:
  - ensure value for money and propriety in the spending of public money;
  - enable works, supplies and services to be delivered effectively and efficiently without compromising the Council's ability to influence strategic decisions;
  - ensure that the Council is not exposed to unnecessary risk and likelihood of challenge arising from non-compliant Procurement activity; and
  - ensure compliance with current Law
- 2.2 These Contract Procedure Rules apply to all persons who commission and or procure contracts on behalf of the Council, including external consultants or third party service providers.
- 2.3 The Policy and Resources Committee may, from time to time, recommend to the Constitution, Ethics and Probity Committee and Council that the financial thresholds set out in these Contract Procedure Rules be amended.
- 2.4 Refer to any approved Scheme of Delegation to identify any manager with the right to undertake Procurement as delegated by their Commissioning Director, Director,

Assistant Director, or Head of Service. Schemes of Delegation will be maintained by the relevant Commissioning Director. All officers must undertake Procurement in a manner which avoids any potential conflicts of interest and must follow the procedure set out in the Officer Code of Conduct.

- 2.5 The Commercial and Customer Services Director in consultation with the Chief Operating Officer shall maintain and issue the Contract Procedure Rules.
- 2.6 Unless the context otherwise requires, terms used in these Contract Procedure Rules shall have the meanings ascribed to them in section 16 (Definitions and Interpretation).

### 3 SCOPE

- 3.1 The Contract Procedure Rules apply to all Procurement activities, including expenditure of external funding, such as grant allocation, received by the Council from external sources.
- 3.2 The Contract Procedure Rules do not apply to Non-Procurement activities as defined in Section 16.17 (Definitions) of these Contract Procedure Rules. Payments to third parties for Non Procurement activities shall be subject to authorisation by Finance.
- 3.3 Where the Council is entering into a Contract as an agent in collaboration with another public body or organisation which is the principal or lead body in the collaboration, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the principal or lead body concerned. Where the Council is acting as principal or the lead body, these Contract Procedure Rules will take precedence.
- 3.4 Where the Council's schools have to abide by the Scheme for Financing Schools which requires them to follow Contract Standing Orders (CSO) for Schools, then the CSO for Schools shall take precedence over these Contract Procedure Rules.
- 3.5 Any interest in land, transaction in land and or lease transaction is excluded from the Contract Procedure Rules but must be authorised in accordance with the requirements set out in the Constitution and, specifically, the Management of Asset, Property and Land Rules.
- 3.6 Section 75 NHS Act 2006 arrangements are not subject to these Contract Procedure Rules

### 4 REGULATION & LEGISLATION

- 4.1 Customer Support Group (CSG) Procurement is responsible for ensuring Council awareness and compliance with the requirements of all relevant Law. Any significant changes to existing or new Law will be reflected in these Contract Procedure Rules.
- 4.2 The Contract Procedure Rules will be regularly reviewed and updated by CSG Procurement with any significant changes referred to the Constitution, Ethics and Probity Committee in accordance with paragraph 2.5.

- 4.3 Officers must treat suppliers equally and without discrimination and must act in a transparent and proportionate manner.
- 4.4 Before commencing a Procurement procedure officers may conduct market consultations with a view to preparing the Procurement and informing suppliers of their Procurement plans and requirements provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency. Officers may, for example, seek or accept advice from independent experts or authorities or from market participants.
- 4.5 Officers must take appropriate measures to effectively prevent, identify and remedy conflicts of interest arising in the conduct of Procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all suppliers. This obligation covers any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the Procurement procedure. [A conflict of interest form is to be issued to all officers, and retained for all officers involved with a procurement exercise.](#)
- 4.6 Where a candidate or tenderer, or an undertaking related to a candidate or tenderer has advised the Council or has otherwise been involved in the preparation of the Procurement procedure, the Council shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer.
- 4.7 Such measures shall include the communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the Procurement procedure; and the fixing of adequate time limits for the receipt of tenders. The measures taken must be documented
- 4.8 The candidate or tenderer concerned shall only be excluded from the procedure where there are no other means to ensure compliance with the duty to treat suppliers equally and prior to any such exclusion, candidates or tenderers shall be given the opportunity to prove that their involvement in preparing the Procurement procedure is not capable of distorting competition.

## 5 ROLES AND RESPONSIBILITIES

- 5.1 Directors, Assistant Directors, Commissioning Directors and Heads of Service are accountable for all Procurement in their respective Delivery Units/area of responsibility. Their duties in relation to all Procurement and Contract Management are to:
  - 5.1.1 ensure compliance with the Law, Council policy and the Contract Procedure Rules;
  - 5.1.2 identify, deliver, measure and record value for money;
  - 5.1.3 ensure that a written pre-tender estimate of anticipated costs, calculated in accordance with Section 6 (Contract Value Calculation) of these Contract Procedure Rules, is prepared and has Budget provision;

- 5.1.4 identify, evaluate, record and appropriately mitigate risk e.g. provision of performance bond or parent company guarantee;
- 5.1.5 maintain a Scheme of Delegation in accordance with Constitutional requirements;
- 5.1.6 ensure that all appropriate staff comply with the provisions of the Contract Procedure Rules and have attended CSG Procurement training before undertaking Procurement and Contract Management activities;
- 5.1.7 take immediate action in the event of a breach of the Contract Procedure Rules within their area of responsibility;
- 5.1.8 ensure that all new Contracts above the published limits, £10,000, and planned during the forthcoming financial year are clearly identified in their Budget and Annual Procurement Forward Plan (APFP);
- 5.1.9 ensure that Contract terms and conditions to be used in a Procurement have been approved by HB Public Law or a Legal Advisor approved by the Monitoring Officer
- 5.1.10 ensure that an original signed Contract is provided to the Deeds Officer and a digital copy of the signed version, together with Acceptance and Authorisation documents and any waiver of these Contract Procedure Rules are placed in the Council's contract repository and a version approved by the supplier is prepared for publication;
- 5.1.11 ensure that proper records of all Contracts and tenders are kept on the Council's approved Electronic Procurement Portal, which may be inspected and kept for the period specified in the Council's Records Retention and Disposal Policy;
- 5.1.12 ensure that the appropriate Procurement process set out in Section 8 of these Contract Procedure Rules is followed;
- 5.1.13 keep a service area/delivery unit register of all Contracts with total values of £5,000 or over, which may be inspected and will support the annual Budget review. CSG Procurement will keep and publish a consolidated register of all Contracts with total values of £10,000 or over, subject to commercial confidentiality and data protection requirements;
- 5.1.14 ensure that all Contract Management is carried out in accordance with Section 13 (Contract Management) of these Contract Procedure Rules;

## 6 CONTRACT VALUE CALCULATION

- 6.1 Contract value means the estimated aggregate or recurring value payable in pounds sterling exclusive of Value Added Tax over the entire Contract period including any form of options or extensions of the Contract.
- 6.2 For Concession Contracts- the estimated value will be the total turnover of the concessionaire generated over the duration of the contract (net of value added tax) in consideration for the works and services which are the object of the concession contract and the supplies incidental to such works and services. Where the Contract term is not

fixed the estimated value of the Contract must be calculated by multiplying the monthly spend value by 48 in accordance with Regulation 6 of the Public Contracts Regulations 2015.

- 6.3 Contracts must not be artificially underestimated or disaggregated into two or more separate contracts with the intention of avoiding the application of Contract Procedure Rules or the Law.
- 6.4 In the case of Framework Agreements or Dynamic Purchasing Systems the contract value must be calculated to include the total estimated value, net of VAT, of all the contracts envisaged for the total term of the Framework Agreement or the Dynamic Purchasing System.

## **7 AUTHORISATION**

- 7.1 Any Procurement, including extensions and variations to Contracts (permitted within the existing Contract) submitted in the Annual Procurement Forward Plan and approved by the Policy and Resources Committee, is deemed as Authorised irrespective of the Contract value.
- 7.2 Any Procurement which has not been Authorised as set out in 7.1 must be Authorised in accordance with Appendix 1 Table A of these Contract Procedure Rules.

## **8 PROCUREMENT METHOD**

- 8.1 Where a Procurement will result in a Framework Agreement, Dynamic Purchasing System or Contract refer to Table A in Appendix 1 of these Contract Procedure Rules to determine the Procurement process that should be used. If any further clarification is required refer to the CSG Procurement Team.
- 8.2 All requirements beneath £9,999 are subject to reasonable means of selection including confirmation of budget and consideration to Barnet's local supplier base, SMEs. All tender opportunities for works, goods or services, over £10,000 (except for Social Care Placements, Special Educational Needs listed in 8.8 and Non-Procurement activities defined in 16.17) must be released using the CSG e-procurement portal and in accordance with Appendix 1, Table A and be subject to Tender Review.
- 8.3 All Procurements for goods and services over £25,000 must be advertised on Contracts Finder within 24 hours of the time when the Procurement is advertised in any other way. Procurement over the EU financial threshold must be advertised in the OJEU first and then on Contracts Finder. A Contract award notice must also be published on Contracts Finder.
- 8.4 Commissioners may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots. They must document the main reasons for their decision not to subdivide into lots.
- 8.5 Where the Procurement is carried out in accordance with 8.1 above and results in a Framework Agreement or Dynamic Purchasing System, any subsequent call-offs must be

carried out in accordance with the rules laid down in the Framework Agreement or the Dynamic Purchasing System.

- 8.6 Where the Council accesses an existing Framework Agreement, the Framework Agreement terms and conditions of contract must be used, amended as appropriate as permitted by the Framework Agreement. Before entering into a Framework Agreement due diligence checks must be carried out to demonstrate that the Council can lawfully access the Framework Agreement and that it is fit for purpose and provides value for money.
- 8.7 Where a performance bond or guarantee is required to ensure Contract performance and/or to protect the Council, the requirement must be pre-notified and the bond or guarantee must be in place before Contract signature.
- 8.8 For Non-Procurement activity that results in a contractual obligation for social care placements and special education needs (SEN) where the decision has been made on the Council's behalf (such as court directed order, personal budget/statement request or an individual's specific needs) the authority to sign off to award an individual funding agreement in accordance with the decision making framework is contained within the Responsibility for Functions as set out in the Constitution.
- 8.9 Procurement activity for Contracts for certain health, social, community, educational and cultural related services whose value is equal to or over the threshold of £ 589,148 must be tendered and awarded in compliance with Chapter 3, Section 7, of the Public Procurement Regulations 2015. Refer to the CSG Procurement Team to advise on the procedures to be applied in connection with the award of these Contracts which will take into account the specificities of the services in question
- 8.10 For Procurements below the EU financial threshold only Suitability Assessment Questions can be asked. This means there can be no ~~PQQ~~ SQ stage.
- 8.11 The award of Contracts will be based on the most economically advantageous tender assessed from the Council's point of view. That tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as Life-Cycle Costing, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, such as qualitative, environmental and/or social aspects, linked to the subject-matter of the Contract in question.
- 8.12 Commissioners shall require tenderers to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services

## 9 SINGLE TENDER ACTION

- 9.1 A single tender action or commitment is not allowed unless it is in compliance with the Law and approved in advance by the Commercial and Customer Services Director. Single tender action is the awarding of a Contract to a contractor without undertaking a competitive tendering exercise. Single tender actions are permitted under Regulation 32 of The Public Contracts Regulations 2015 in the following exceptional circumstances:

- where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the Contract are not substantially altered;
- where the works, supplies or services can be supplied only by a particular supplier for any of the following reasons:
  - i. the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,
  - ii. competition is absent for technical reasons,
  - iii. the protection of exclusive rights, including intellectual property rights, but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.
- insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the Council, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with;
- in the case of goods contracts, for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- in the case of works or services contracts, new works and services consisting of the repetition of similar works or services entrusted to the contractor to which the Council awarded the original Contract, provided that such works or services are in conformity with a basic project for which the original Contract was awarded following a competitive procedure under the Public Contracts Regulations 2015. The basic project must indicate the extent of possible additional works or services and the conditions under which they will be awarded. As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authority when assessing the estimated contract value.

9.2 Where a competition has been undertaken, in accordance with Section 8, and only a single bid has been received, the Commercial and Customer Services Director can approve the award of a Contract, subject to a value for money review being undertaken and an audit trail being available for inspection. The award of the Contract cannot proceed without this authorisation.

9.29.3 Single tender actions for contract awards above the EU financial threshold will only be agreed where one or more of the circumstances set out in rule 9.1 apply. Otherwise approval for single tender actions is only likely to be granted for contracts, including

works contracts, below the financial threshold for services and supplies contracts (currently £164,176).

## 10 CONCESSION CONTRACTS

10.1 The Concession Contracts Regulations 2016 (CCR) apply to the award of works Concession Contracts or services Concession Contracts above £4,104,394

10.2 Concession Contracts must meet the following requirements:

- The award of the contract involves the transfer to the concessionaire of an operating risk in exploiting the works or services encompassing demand or supply risk or both.
- The part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible. The concessionaire shall be deemed to assume operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject-matter of the Concession Contract

10.3 The same general principles that apply to other procurement rules apply to the award of Concession Contracts. In particular, the Council must treat providers equally and without discrimination and must act in a transparent and proportionate manner.

10.4 Seek advice from CSG Procurement and/or Legal Services if you are consider that you might want to award a Concession Contract

## 11 INFORMATION GOVERNANCE

11.1 When engaging a contractor to provide a service to the Council which involves the handling of personal data due diligence checks must be carried out with regards to data protection. Checks must provide sufficient guarantees that the contractor's technical and organisational security measures for the handling and protection of personal information and data are appropriate, suitable and lawful. This is a requirement under the seventh principle of the Data Protection Act.

11.2 To ensure compliance with information management requirements all procurement activity must include the completion of the information management questionnaire by the supplier. This will be made available for all activity conducted through the procurement porta. However for lower values beneath £9,999 it is the service area/delivery unit's responsibility to ensure that the questionnaire is completed by suppliers awarded contracts.

11.3 Evidence of these checks, copies of policies and guarantees provided by the contractor must be retained by the officer responsible for management of the Contract and be regularly reviewed throughout the life of the Contract (at least annually). If there is any doubt as to whether the checks provide sufficient guarantees for the service provision refer to the Council's Information Management team.

- 11.4 Appropriate data protection clauses must be included in the Contract when engaging a contractor to provide a service to the Council which involves the handling of personal data. As a minimum the clauses contained in the Council's Standard Terms and Conditions of Contract must be used. Changes must not be made without consultation with the Council's Information Management Team.
- 11.5 Refer to the Council's Data Protection Compliance Toolkit for further guidance on your data protection responsibilities, including the current Due Diligence Checklist and the How to Guide.
- 11.6 Appropriate Freedom of Information Act 2000 (FOI) and Environmental Information Regulations 2004 (EIR) clauses must be used when engaging a contractor to provide a service to the Council. The clauses contained in the Council's Standard Terms and Conditions of Contract must be used. Changes must not be made without consultation with the Council's Information Management Team. The Contract must not contain clauses which say that the Contract itself or any information held or produced etc under it are exempt from FOI or EIR. The Contract must not contain any clauses which describe which information would be exempt from disclosure under FOI or EIR.
- 11.7 Refer to the Council's FOI/EIR Toolkit for further guidance on your FOI/EIR responsibilities.

## 12 ACCEPTANCE

- 12.1 Acceptance of Contracts must be in accordance with Appendix 1 Table A and in all cases is subject to:
- Budget provision;
  - a compliant Procurement process; and
  - confirmation of acceptable financial status of the service provider
- 12.2 Acceptance of contracts with independent providers of individual placements for children or adults will in the first instance be achieved through approved frameworks or approved lists of providers. Where requirements cannot be met through approved frameworks or approved lists, authority is delegated to the relevant director of a service area as per the scheme of delegation to enter into contract with a new independent provider. At the point of child/adult placement the Council does not require a contract; however, once placement has been made the commissioner should instruct legal to issue a contract to the new provider.
- 12.3 Acceptance thresholds for Contract extensions and variations of all values are subject to further conditions as set out in Section 14 (Extensions and Variations) of these Contract Procedure Rules.
- 12.4 The financial evaluation of tenders will be undertaken by:
- CSG Procurement if the Contract is valued at less than £164,176 for supplies or services or less than £4,104,394 for works, or;

A Financial Officer as delegated by the Chief Finance Officer if: (a) the contract is valued at £164,176 or more, for supplies or services; or (b) the contract is valued at £4,104,394 or more for works; or (c) the contract is considered to have significant impact on the local community.

## 13 CONTRACT SIGNING and SEALING

- 13.1 Every Contract or Contract novation must be in a form approved by the Monitoring Officer (in consultation with HB Public Law) or delegated officer, if its value exceeds £25,000 or where appropriate to the nature of the Contract.
- 13.2 All Contracts awarded following a Procurement process with a Contract value above the EU financial threshold shall be sealed unless the Monitoring Officer or delegated officer directs otherwise.
- 13.3 Contracts, Dynamic Purchasing Systems, approved lists or Framework Agreements entered into with respect to the provision of social care to individual service users must be sealed. Call-off placements from a Framework Agreement under the EU financial threshold do not require sealing and need only be signed by the respective Director in accordance with the Scheme of Delegation.
- 13.4 Where the Monitoring Officer or delegated officer considers it desirable that a Contract should be sealed other than as specified above, then such a Contract must be sealed.

## 14 CONTRACT MANAGEMENT

- 14.1 During the life of the Contract Directors, Assistant Directors, Commissioning Directors and Heads of Service must ensure that the Council's approved processes for Contract Management, as set out in the Contract Management Toolkit are adhered to. In particular to ensure continuous improvement and value for money is achieved Directors, Assistant Directors, Commissioning Directors or Heads of Service must ensure that those responsible for managing contracts undergo CSG Procurement approved training to ensure:
- Contract performance and key performance indicators are monitored and any reduction in performance is acted upon and recorded;
  - compliance with specification and Contract terms; and
  - cost management including reconciliation of payments against work done, supplies or services delivered;
- 14.2 Throughout the life of the Contract, contract managers must ensure the elimination of unlawful discrimination and the promotion of equality in accordance with current Law.

14.3 Contract managers or owners must ensure appropriate security measures are applied to prevent the unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to personal data.

14.4 **On each and every procurement the Contract Manager must ensure the agreement has:**

- a) wording in which the contractor agrees to indemnify the Council for all claims proceedings, actions and other matters relating to the contract, except where the Council is found to be legally liable; and
- b) a clause in which the contractor agrees to certain service levels while dealing with claims arising from service failures; and
- c) a clause requiring the full range of relevant insurances and minimum levels to be provided by the contractor.

Advice on relevant insurances must be obtained from the London Borough of Barnet Insurance Team.

It should be noted the minimum level of required insurances of contractor is not directly related to the value of the contract. Using a risk based approach the Contract Manager and London Borough of Barnet Insurance Team will agree appropriate levels but as a guide, minimum levels, subject to amendment are as follows:-

- 1) public liability £5,000,000;
- 2) employer's liability £5,000,000 (statutory minimum);
- 3) officials indemnity/professional negligence (if required) £1,000,000;
- 4) and any other insurance required by law or agreed in the contract.

The Contract Manager must obtain from the contractor reasonable proof of the required insurance as set out in the contract before work commences, a broker letter will often be sufficient.

If the required insurances expire before the contract end date, the Contract Manager must obtain from the contractor reasonable proof that the insurance has been renewed on expiring terms and conditions. If the insurance policy terms and conditions have changed, such changes must be brought to attention of the Contract Manager and discussed with the London Borough of Barnet Insurance Team.

14.5 For all contracts, in excess of £25,000, business continuity must be discussed and a business continuity plan confirmed as part of contract delivery.

~~14.3~~14.6 All contracts to be managed to ensure development and delivery of support to the local community and SME supply chain through the contract arrangement. This is to be monitored as a performance target to enable review reports.

14.7 For services or supplies Contracts valued above £164,176 and works Contracts above £500,000 a Contract monitoring and review check must be performed 6 months after Contract commencement.

## 15 EXTENSIONS and VARIATIONS

- 15.1 Regulation 72 of the Public Contracts Regulations 2015 permits an amendment, extension or renewal of an existing Contract without triggering a new Procurement exercise in the following cases:
- a) The original Contract includes a “clear, precise and unequivocal review clause” (including a price review clause) allowing for a certain modification to be made, provided the review clause(s) clearly state(s) the scope and nature of the changes that can be made and the conditions under which such a change can be made. The overall nature of the Contract must not be altered as a result of the change;
  - b) A change of contractor cannot be realistically made for economic or technical reasons and would cause significant inconvenience or substantial duplication of the Council’s costs, and new works, services or supplies need to be purchased from the contractor. This is subject to the provision that each change does not increase the Contract’s value by more than 50 per cent as a result;
  - c) Circumstances have arisen that the Council could not reasonably have foreseen and that require an amendment to the existing Contract. The Contract’s overall nature must not be altered and the Contract’s value must not increase by more than 50 per cent as a result of any change;
  - d) A new contractor is required to replace the contractor originally party to the Contract, either because this is the result of corporate restructuring, including takeover, merger, acquisition or insolvency leading to a universal or partial succession of the original contractor, or because this change was envisaged in a review clause in the original Contract. This provision cannot be relied on if the contractor is being replaced for a different reason;
  - e) The proposed modifications are insubstantial. Modifications will not be insubstantial if they result in any of the following:
    - the Contract would become materially different;
    - the scope of the Contract would extend considerably;
    - the outcome of the initial Procurement procedure would have been different had the modification been implemented at that time. For example, other tenders would have been accepted or other candidates would have been admitted;
    - the economic balance would shift in favour of the contractor; or
    - a new contractor would replace the original contractor in a circumstance not provided for in d) above.
  - f) The value of the modification is both below the EU procurement financial threshold and less than 10 per cent of the initial Contract value (where the contract is for supplies or services) or less than 15 per cent of the initial Contract value, in the case of a works contract. More than one change can be made under this provision

provided the cumulative value of the modifications do not exceed the EU procurement financial threshold.

- 15.2 Commissioners must consult CSG Procurement to confirm that any of the circumstances set out in section 14.1 above apply, permitting a Contract amendment, extension or renewal and Commissioners must also comply with the Authorisation and Acceptance Thresholds in Appendix 1 Table A.
- 15.3 Placement Agreements for individuals in Social Care or Educational Needs may be varied or extended without reference to the Variation or Extension Acceptance levels and documentation set out in Appendix 1 Table A.
- 15.4 The value referred to in Appendix 1 Table A in the column headed 'Variation or extension Acceptance' is the total value of the original Contract value plus the addition of the value of any extensions and/or variations i.e. the total value of the extended or varied Contract.
- 15.5 Contracts may only be extended or varied if all of the following conditions have been met:
- the initial Contract was based on a Contract Procedure Rules compliant competitive tender or quotation process;
  - the value of the extension or variation added to the value of the original Contract does not exceed the original Authorisation threshold as defined in Appendix 1, Table A;
  - the extension or variation has an approved Budget allocation;
  - the extension or variation is in accordance with the terms and conditions of the existing Contract;
  - if the initial Contract was subject to an EU regulated tender procedure, that the extension option was declared within the OJEU contract notice and the original Acceptance report (Delegated Powers Report/relevant Committee Report); and
  - the Contract has not been extended before;
- 15.6 Where the Procurement results in a Contract which includes a provision for an extension, any Acceptance of that extension needs to be in accordance with Appendix 1 Table A.
- 15.7 If any of the conditions at 14.4 or 14.6 cannot be met, then a new Procurement exercise must be commenced.
- 15.8 Where a variation or extension moves the total value of the Contract into a higher threshold, then acceptance must be sought in accordance with Appendix 1 Table A.
- 15.9 A Contract Variation Notice needs to be sent to OJEU in the case of contract variations permitted and made in accordance with paragraphs b) and c) of section 14.1 above.

## 16 WAIVERS

- 16.1 If the application of these Contract Procedure Rules prevents or inhibits the delivery or continuity of service, Directors or Assistant Directors, Commissioning Directors and Heads of Service may apply for a waiver. All applications for a waiver of these Contract Procedure Rules must be submitted to Policy and Resources Committee specifically identifying the reason for which a waiver is sought, including justification and risk.
- 16.2 Directors, Assistant Directors, Commissioning Directors and Heads of Service may take decisions on emergency matters (i.e. an unexpected occurrence requiring immediate action) in consultation with the Chairman of Policy and Resources Committee providing they report to the next available Policy and Resources Committee, setting out the reasons for the emergency waiver. A copy of the relevant Policy and Resources Committee report must be provided to CSG Procurement and stored on the Council's contract repository.
- 16.3 Inadequate planning and organisation of resources does not constitute an acceptable justification for a waiver.
- 16.4 Any waiver can only be granted for a maximum period of 12 months.
- 16.5 Waivers cannot be granted where this would breach the Law

## 17 DEFINITIONS and INTERPRETATION

- 17.1 **"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.
- 17.2 **"Annual Procurement Forward Plan"** (APFP) means the annual report compiled by the Council setting out their planned contractual Procurements for the forthcoming financial year and submitted to the Policy and Resources Committee for authorisation.
- 17.3 **"Approved Officer"** means the Director, Assistant Director, Service Lead, Commissioning Director or Head of Service in accordance with the Scheme of Delegation who has responsibility for all Contracts tendered and let by their respective area of responsibility including Contract monitoring and Contract Management once Contract is in place.
- 17.4 **"Authorisation"** is the approval required to enable any Procurement to occur.
- 17.5 **"Budget"** is the annually agreed budget and supporting plans and strategies for each Delivery Unit.
- 17.6 **"Concession Contract"** means a services concession contract or a works concession contract as defined in The Concession Contracts Regulations 2016. They are contracts for pecuniary interest which consist either solely in the right to exploit the services or works that are the subject of the contract or in that right together with payment.
- 17.7 **"Contract"** means a formal written agreement between the Council and the provider of any goods, services or works, including terms and conditions approved by HB Public Law.

- 17.8 **“Contract Management”** is the process of managing contracts to achieve optimal goods, works and services at optimal cost in accordance with the Council’s Contract Management Toolkit
- 17.9 **“Contracts Finder”** means a web-based portal provided for the purposes of Part 4 of the Public Contracts Regulations 2015 by or on behalf of the Cabinet Office;
- 17.10 **“DPR”** means Delegated Powers Report. Templates and guidance for completion are available from the Assurance Group (Governance).
- 17.11 **“Dynamic Purchasing System”** is appropriate for commonly used purchases the characteristics of which, as generally available on the market, meet the Council’s requirements. The rules for using it are set out in regulation 34 of the Public Contracts Regulations 2015.
- 17.12 **“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 statutory plans.
- 17.13 **“EU”** means European Union.
- 17.14 **“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.
- 17.15 **“Law”** means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Council is bound to comply
- 17.16 **“Life-Cycle Costing”** shall, to the extent relevant, cover part or all of the following costs over the life cycle of a product, service or works:—
- (a) costs, borne by the Council or other users, such as:
    - (i) costs relating to acquisition,
    - (ii) costs of use, such as consumption of energy and other resources,
    - (iii) maintenance costs,
    - (iv) end of life costs, such as collection and recycling costs;
  - (b) costs inputted to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified. These costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs
- 17.17 **“Light Touch Regime”** refers to the contract award procedures applicable to contracts for services set out in schedule 3 of the Public Contracts Regulations 2015 which are valued at EUR 750,000 (or around £589,148) or more. These contract opportunities and contract award notices must be advertised in OJEU and Contracts Finder. CSG

Procurement will advise on the Procurement procedures to apply to these Contracts which will take into account the specifics of the services in question and which will ensure compliance with the principles of transparency and equal treatment of suppliers.

~~17.17~~17.18 **“Non-Procurement”** expenditure applies where the Council has to pay for a Service which it did not initiate or for payments where it is not appropriate to tender including (but not exclusively) inter-authority and inter-agency payments, subscriptions/memberships, emergency temporary accommodation for vulnerable people, assessments and recoupment.

~~17.18~~17.19 **“OJEU”** means the Official Journal of the European Union.

~~17.19~~17.20 **“Procurement”** means the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose. This includes any activity which includes the identification of need, options appraisal and the execution of a competitive selection process, quotation or tendering process.

~~17.20~~17.21 **“Public Contracts Regulations 2015”** are the regulations implementing EU Directive 2014/24/EU of the European Parliament and Council into English Law

~~17.21~~17.22 **“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.

~~17.22~~17.23 **“Quotation”** means a priced bid for the provision of goods, a service, or supply of works.

~~17.23~~17.24 **“Reasonable means of selection”** means 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 normally involve attaining more than one quotation, audit trail of action undertaken and confirmation from the relevant approved officer that budget is available and rationale for appointment is accepted. The Council requires that consideration is given to local suppliers for requirements less than £9,999

~~17.24~~17.25 **“Small Medium Enterprises” (SMEs)** means the definition the UK government use based on the EU Definition of an SME as follows:

- Micro Business = less than 10 employees & turnover under £2 million
- Small Business = less than 50 employees & turnover under £10 million
- Medium Business = Less than 250 employees & turnover under £50 million

17.26 **“SQ”** means Selection Questionnaire in accordance with Procurement Policy Note (PPN) 8/16 regarding OJEU procurements. Accessibility to the form will be via the procurement portal with expectation that suppliers complete and submit online. In accordance with Public Contract Regulations 2015 these questions are to be in the form of declarations with successful contractor to provide support documents at point of proceeding to contract award.

17.27 **“Suitability Assessment Question”** means a question which relates to information or evidence which the Council requires for the purpose of assessing whether candidates

meet requirements or minimum standards of suitability, capability, legal status or financial standing. In accordance with Public Contract Regulations 2015 these questions are to be in the form of a declaration which the is to provide at point of proceeding to contract award.

17.28 **“Support to Local Community”** refers to support through contract delivery to the communities which exist within London Borough of Barnet and delivery of benefit to these communities. Benefit to include: consideration and provision of paid internships; apprenticeships; long term unemployed returning to work opportunities; and support to local schools/community groups.

17.29 **“Works”** means building & engineering works, construction and refurbishment, including capital works.

18 APPENDIX 1 - TABLE A – Authorisation and Acceptance Thresholds

	Procurement value	Authorisation to commence a procurement process	Authorisation Documentation	Procurement method	Acceptance process	Acceptance Documentation	Variation or extension Acceptance	Supplier Notification method and contract
<b>A</b>	Under £9,999 (Purchase Order)	Head of Service  Council Officer as designated by approved Scheme of Delegation	Audit trail	Reasonable means of selection* and evidence of having sourced and considered the local Barnet supplier market	Head of Service  Council Officer as designated by approved Scheme of Delegation	Audit Trail	Must move to next threshold if above £10,000	Purchase Order
<b>B</b>	£10,000 to £25,000	Head of Service  Council Officer as designated by approved Scheme of Delegation	Procurement Forward Plan  Summary DPR	Minimum 2 written Competitive Quotations received**	Head of Service  Council Officer as designated by approved Scheme of Delegation	Summary DPR	Summary DPR	Purchase Order
<b>C</b>	£25,001 - £164,176	Director/Assistant Director	Procurement Forward Plan  Full Officer DPR	Minimum 2 written Competitive Quotations received  No PQQ -	Council Officer as designated by approved Scheme of Delegation	Summary DPR		Notification letter  Signed low value contract up to £50k value

				Suitability Assessment Questions only			Summary DPR	Signed contract £50,001 to £164,176k
D	£164,176 and over	Relevant Thematic Committee  Procurement Forward Plan	Theme Committee Report  Procurement Forward Plan	Works and Concession Contracts: Full OJEU Tender above £4,104,394  Beneath threshold above £100k minimum 5 competitive quotations  Goods: Full OJEU Tender  Services: Full OJEU Tender  Health, educational, cultural and social care related services: Light Touch Regime Tender above. £589,148)	If within Budget- Council Officer in consultation with Chairman of relevant theme       Policy and Resources Committee	If within Budget and agreed savings target on forward plan Officer Full DPR   If not within Budget or on Forward Plan Relevant Thematic Committee Report	If within Budget -Relevant Thematic Committee	Standstill Notification letter released following statutory officer report review  Publication of report post standstill period   Signed and sealed contract

All Procurements above £10,000 must be advertised on the E-portal (see 8.2). All Procurements over £25,000 must be advertised on UK Contracts Finder

\*Reasonable means of selection as defined in section 16.24

\*\*Under OJEU threshold the Commercial and Customer Services Director may waive the requirement of 2 written quotes subject to a Summary DPR provided, demonstrating that the market place has been fully tested and we have obtained value for money.