

BARNSELY METROPOLITAN BOROUGH COUNCIL

CONTRACT PROCEDURE RULES

October 2024 (Approved by Full Council)

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1. Definitions

Above Threshold	Means a procurement where the value is in excess of the Regulation Threshold for goods, services or works at the time a notice to the market is issued.
Accountable Body	means where the Council is the lead body for another public body.
Assessment Methodology	How tenders are to be assessed by reference to the award criteria.
Assessment Summary	Information about the contracting authority's assessment of the tender and, if different, the most advantageous tender submitted in respect of the contract.
BEIS	means the Department for Business, Energy & Industrial Strategy, or from 2023 onwards Department for Energy Security and Net Zero (DESNZ)
Berneslai Homes	means Berneslai Homes Ltd, the Council's LATC arm's length management organisation of its social housing stock.
Best Value Form	Document used as a record of Procuring Officer approach to achieving Value for Money on any procurement led by Service.
Central Digital Platform	Cabinet Office tool for the publication of all notices required for above and below threshold procurements undertaken by public sector Contracting Authorities.
Competitive Tendering Procedure	Either (1) a single stage tendering procedure without restriction on who can submit tenders, or (2) some other competitive tendering procedure considered appropriate by the authority (subject to certain parameters).
Concession Contract	means a contract for pecuniary interest concluded in writing between a contracting authority and an economic operator/(s); where the consideration (or 'payment') is either: <ul style="list-style-type: none">- simply that the contractor has the right to exploit (that is, to profit from) the works/services that are the subject of the contract, or- where the contractor has that right together with some payment from the contracting authority.
Convertible Contract	A contract that, because of the modification, will become a public contract, under section 74 (1) Procurement Act 2023.

Conflicts Assessment	An assessment of the conflicts and potential conflicts in relation to a procurement or dynamic market.
Constitution	means the Council's constitution particularly 'Terms of Reference of the Full Council, Regulatory Boards and Committees and functions delegated to Officers', 'Responsibility for Executive Functions Officer Delegations' and 'Part 2 the Cabinet'.
Contract Manager	Officer responsible for management of a specific contract in line with a defined Contract Management Plan.
Contract Management Plan	Means a working document summarising all the practical details needed to efficiently manage contracts including objectives, milestones, roles and responsibilities, and key contacts.
Contract Management Toolkit	Documentation and guidance to support the management of a contract in line with the contract management plan.
Contract Variation	An amendment to a contract which changes the contract in value, term, scope, terms and conditions which is outside of what was originally approved.
Contracts Finder	means the web-based procurement portal provided by or on behalf of the Cabinet Office.
Debarment List	A list of suppliers excluded by virtue of a mandatory or discretionary exclusion ground (Section 62 of the Procurement Act 2023).
Direct Award	A public contract awarded directly to a supplier where a direct award justification applies, as per Section 41 of the Procurement Act.
DPS	means Dynamic Purchasing System as defined by the PCR 2015. This is a Frameworks where new suppliers can apply to join at any time and it is to be run as a completely electronic process.
Dynamic Market	A procedure under the Procurement Act 2023 which is a Frameworks where new suppliers can be added at any time for all procurement types.
Executive Director	means any member of the Council's Senior Management Team or the authorised representatives of any of those officers.
FTS	means the Find a Tender Service.

Framework	means an agreement with a supplier or suppliers to establish terms governing contracts that may be awarded during the lifetime of the agreement.
Grant Agreement	means an agreement whereby the Council provides monies to an individual or an organisation for a defined purpose, e.g. to deliver a project, provide a function or service without the expectation of any monetary benefit to the Council except the repayment of the monies if the funding terms are not complied with by the recipient.
Gateway Approach	means a process where a procurement project has review stages which require approval to ensure a procurement project is progressing correctly.
GPA	means the World Trade Organisation's Agreement on Government Procurement.
Healthcare Services	Means those services detailed within Schedule 1 of the Health Care Services (Provider Selection Regime Regulations 2023).
Housing Revenue Account (HRA)	the Council's ringfenced income and expenditure account for its own housing stock.
Key Performance Indicators (KPI's)	means a quantifiable measure for performance over time for a specific objective(s).
Letter of Intent	means typically a letter from an Employer to a contractor (or from a main contractor to a sub-contractor) indicating the Employer's intention to enter a formal written contract for works described in the letter and asking the contractor to begin preparatory works, the scope and extent of which (physical and financial) are outlined in the letter of intent before the formal contract is executed. While a letter of intent may come in many forms, it is essentially a communication expressing an intention to enter a contract at a future date
Light Touch Services	means the social and other specific services listed in schedule 3 to the PCR 2015 Regulations and Section 9 of the Procurement Act 2023, Light Touch Regime (LTR).
Limited Company	Means a company limited by shares or by guarantee.
Local Authority Trading Company (LATC)	Means a Limited Company which is wholly owned by BMBC or wholly owned by BMBC with other Public Bodies or is owned in the majority by Public Bodies with private enterprise(s) holding a minority interest for capital investment and control of the company lies with the Public Bodies as required under

	Regulation 12 of the Public Contract Regulations 2015.
Member	means a Member of the Council also known as 'Councillor'.
Notices	Means all transparency notices required in relation to the Regulations to meet obligations as a Contracting Authority for Above Threshold and Regulated Below Threshold procurements.
Payment Compliance Notice	A notice setting out details of the Authority's compliance with the requirement under the Regulations to pay suppliers within 30 days of receipt of invoice.
Pipeline Notice	A notice setting out specified information about any public contract with an estimated value of more than £2 million in respect of which the contracting authority intends to publish a tender notice or transparency notice during the reporting period.
Procurement Team	means the Head of Strategic Purchasing, Procurement and Contract Management or person nominated by them.
Public Procurement	means public sector expenditure as defined by HM Government.
Procuring Officer	Nominated officer of the Executive Director who is responsible and accountable for the procurement and alignment / compliance to these rules.
PSR	Means the Health Care Services Provider Selection Regime Regulations 2023.
Records Retention Policy	means the Council's Record Retention Policy located on the intranet within the Records Management Section (Retention Guidelines).
Regulated Below Threshold Procurement	A below Regulation Threshold contract which is not an exempted contract, concession contract or utilities contract.
Regulations	means the Public Contracts Regulations 2015 and (subject to confirmation by the government of the date and mechanism by which it enters into force) the Procurement Act 2023.
Regulation Thresholds	means the values of a contract calculated in accordance with the Regulations and as amended from time to time by legislation in accordance with established Government Procurement Agreement

	(GPA) practice where procurement opportunities are subject to the Regulations.
Rule(s)	means these Contract Procedure Rules.
Senior Responsible Officer	Means the Service Director or Executive Director with primary responsibility for the contract, is the primary risk owner, and is responsible for ensuring that the contract meets its objectives, delivers the required outcomes, and realises the required benefits.
SharePoint	The Council's cloud-based storage site for documentation.
Small, Medium Enterprise (SME)	means a company with a limited number of employees and turnover.
Social Value	means the requirement to consider social, economic and environmental benefits through procurement.
State Aid	means any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU).
Subsidy Advice Unit	part of the Competition and Markets Authority responsible for advice, monitoring and reviewing the operation of the UK subsidy control regime.
Subsidy Control Act	refers to the Subsidy Control Act 2022 and associated statutory guidance.
Tiering Tool	Means the Council's assessment tool for tiering contracts by value, risk, impact and complexity.
Voluntary Sector Organisation (VSO)	means not for profit organisation that has social objectives as its purpose for existence.
Value for Money/Best Value	<p>The best mix of quality and effectiveness for the least outlay over the period of use of the goods/ services bought. It is not about minimizing up-front costs, 'four Es' – economy, efficiency, effectiveness and equity:</p> <ul style="list-style-type: none"> • economy – minimising the cost of resources for an activity ('doing things at a low price') • efficiency – performing tasks with reasonable effort ('doing things the right way') • effectiveness – the extent to which objectives are met ('doing the right things'). • equity – This reflects the extent to which services are available to, and reach, the people they are intended for, and whether the

benefits from the services are distributed fairly.

YORtender

means the Council's electronic procurement system.

Waiver to Competition Form

Document to explain the reason for non-compliance with these rules and confirm approvals obtained.

2. Introduction

- 2.1 These Contract Procedure Rules set out the procedures to be followed in relation to contracts, whatever the method of payment, for works, supplies, services or social and other specific services, and Health Care Services (unless otherwise specified) entered into by or on behalf of the Council. This would include maintained schools and circumstances when the Council is the Accountable Body. They aim to ensure a system of openness, fairness, and transparency and facilitate the Council achieving value for money.
- 2.2 These Rules should be read and acted upon in conjunction with the Council's Constitution and [Financial Regulations](#), the Scheme for Financing Schools, the [Code of Conduct](#) for Officers and Members, the Government guidance on best value and the guidance available on the [Procurement Team Intranet Site](#).
- 2.3 All Council procurements and contracts must comply with Public Procurement Principles (equal treatment, transparency, non-discrimination and proportionality), the Government Procurement Agreement, and the Regulations which are applicable at the time of the publication of the tender notice, and, in respect of any EU Legislation with direct effect in the United Kingdom prior to 29 March 2019, any consolidation or restatement of the same into UK law as a result of the United Kingdom exiting the European Union, these Rules and the other matters referred to in Rule 1.2 above. Additionally, where the Council is utilising grant funding, the Subsidy Control Act must be complied with and terms and conditions of the grant agreement must be examined closely and complied with. It should be noted that agreements with other public bodies and with Council-owned companies may also be subject to these regulations, and advice should be sought from the Procurement Team and Legal Services.
- 2.4 These Rules do not apply to:
- (a) contracts of employment which makes an individual a direct employee of the Council. (These Rules do apply to contracts for recruitment agency services and the employment of consultants or agency staff).
 - (b) agreements regarding the acquisition, disposal or transfer of land for which provision is made within the Local Government Act 1972 and in relation to which Financial Regulations apply (unless the use of land is for development purposes).

These Rules only apply in part to:

- (c) contracts where there is an urgent requirement to obtain specialist skills on a short-term basis which are not currently available in the Council's structure, where the total value of this requirement is up to and including £100,000, and which cannot be sourced via the corporate temporary recruitment contract.
- (d) Mandatory works by statutory undertakers, such as utility companies.
- (e) External or grant funding to be allocated in accordance to set terms, for example use of specified contractors for works being funded by the grant.
- (f) The creation or acquisition of a unique work of art or artistic performance.
- (g) Renewals where the supply is restricted to the original supplier.

Where these Rules apply in part the Procuring Officer must ensure that the due diligence and value for money checks are undertaken.

- 2.5 All values stated in these Rules are exclusive of VAT unless otherwise stated and are aggregated values of the total value of a specific goods, service or works procured by the Council.
- Total values shall not be disaggregated specifically to avoid competition or a specific type of competition.
- 2.6 All Executive Directors are responsible and accountable for ensuring officers within their directorate comply with these Rules.
- 2.7 Any failure to comply with these Rules may result in disciplinary action against the officer(s) concerned. Officers and Members must exercise the highest standards of conduct, integrity and impartiality when involved in the procurement, evaluation, award and management of contracts. The Council's Anti-Fraud, Corruption Policy and [Code of Conduct](#) must be complied with.
- 2.8 Any difference of opinion regarding the meaning of these Rules shall be resolved by the Council's Monitoring Officer.
- 2.9 Proper and accurate records must be kept of all aspects of the Competitive Tendering Procedure, including steps taken, selection and evaluation of bidders, decisions made, and approvals obtained etc. All documentation must be retained in accordance with the Council's [Records Management Policy](#). Records wherever practicable should be in electronic form and in PDF format and uploaded to the project on YORtender and SharePoint.
- 2.10 Where it is an Above Threshold Procurement the paperwork must be retained in line with the Regulations applicable at the time of the tender notice.
- 2.11 These Rules shall be reviewed periodically by the Executive Director, Core Services in consultation with the Council's Procurement Team and other key officers.
- 2.12 These rules also apply to procurements undertaken by the Council's LATCS (e.g. Berneslai Homes where funding is from the Housing Revenue Account).
- 2.13 When a contract comprises a mixture of in-scope Health Care Services and out-of-scope Services or Goods, relevant authorities may only use the PSR to arrange those services when both of the below requirements are satisfied:
- The main subject-matter of the contract is in-scope Health Care Services.
 - The relevant authority is of the view that the other goods or services could not reasonably be supplied under a separate contract.

PRE-PROCUREMENT REQUIREMENTS

3. Subsidy Control

- 3.1 The purchase of goods, works and services in any scenario where we are giving a benefit to a supplier, including but not limited to grant funded projects are subject to rigorous audits to confirm that processes do not infringe the Subsidy Control Act.
- 3.2 Failures by grant recipients to comply with the Subsidy Control Act, Public Procurement Law and the conditions of the grant funding can lead to the claw back of funding or other sanctions. Depending upon the characteristics of the breach, claw back could be up to 100% of the grant plus interest. Additional procedural rules apply to grants under the Subsidy Control Act, including obligations to publish information on the BEIS transparency register and, for certain types and/or value of grant, to first seek approval of the Subsidy Advice Unit before the grant can be given.

- 3.3 Where funding is sought to fund a procurement project no part of the Council should apply for the funding unless it has first fully considered and planned how it will be able to demonstrate compliance with the Subsidy Control Act, Regulations, and the terms and conditions of the grant funding.

4. External Grant Funded Procurements

- 4.1 The Procuring Officer must ensure that the procurement and contract management processes comply with the requirements of the external grant funding as well as these rules and the Regulation applicable at the time of the procurement to mitigate the risk of clawback of any funding.
- 4.2 There are separate penalties for breaches of Public Procurement Law.
- 4.3 Where funding is sought to fund a procurement project no part of the Council should apply for the funding unless it has first fully considered and planned how it will be able to demonstrate compliance with the Subsidy Control Act, Regulations, and the terms and conditions of the grant funding.

5. Social Value/Inclusive Economy

- 5.1 Under the Public Services (Social Value) Act 2012, the Council is required to consider how goods, services and works, that it procures, improve the economic, social and environmental well-being of the Metropolitan Borough of Barnsley, and furthermore, that as a matter of procurement policy and practice, the Council requires any supplier, provider, consultant or contractor providing goods, services and works to the Council to use all reasonable endeavours to assist the Council to improve the economic, social and environmental well-being of the Borough.
- 5.2 All procurements regardless of value should consider social value / inclusive economy considerations in the requirements of the procurement.
- 5.3 It is a legal requirement for social value to be considered in Above Threshold Regulated procurements and good practice to be considered below threshold. Reference should be made to the [Social Value Policy](#).
- 5.4 All social value outputs shall be recorded detailing the social value achieved including particular case studies. Reference shall be made to the social value guidance on the [Procurement Team Intranet Site](#)

6. Sustainability Considerations

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

7. Conflict of Interest

- 7.1 Every Competitive Tendering Procedure, including those for Health Care Services, must be free from any allegation of any conflict of interest from all those involved in any part of the process.
- 7.2 All participants in the procurement project team, with the ability to influence the tender, evaluation or appointment should sign a conflict-of-interest form. Template forms are found on the [Procurement Team Intranet Site](#).
- 7.3 Where support is sought from Legal Services the commercial legal team will act in line with their own code of conduct and regulated duties in relation to conflicts of interest and therefore will only be required to complete a conflict of interest form where they are taking a role of stakeholder (in procuring goods/services for the Legal Services Team) or where they extend their role to the extent they have the ability to influence the tender, evaluation or appointment.

- 7.4 For procurements led by the Procurement Team it is their responsibility to manage this process by ensuring the forms are completed by all members of the project team.
- 7.5 The conflict-of-interest form should be completed at the start of the process and updated when bids are received and retained for audit trail purposes.
- 7.6 Where there is a conflict of interest (COI) involved, the project team must consider the declared conflict and document a mitigation plan which must be approved by the responsible Service Director(s). If a COI is declared by a member of the evaluation panel, then this person(s) must be excluded from the evaluation panel to avoid exposing the Council to any commercial risk, i.e., supplier challenge or complaint.
- 7.7 Above Threshold procurements must have a documented Conflicts Assessment to confirm the conflict-of-interest declarations and demonstrate actions taken to mitigate the impact of a conflict if identified.
- 7.8 The Contract Manager must ensure that conflicts of interest are monitored and managed throughout the contract period.

8. Existing Arrangements

- 8.1 Before commencing any Competitive Tendering Procedure, the following must be considered, excluding Health Care Services.

- (a) In-house Providers

Subject to the exceptions in relation to procurement by Area Councils, before commencing any proposed Competitive Tendering Procedure the relevant Executive Director must consider the need to consult any other Executive Director (or in the case of their own directorate the appropriate Service Director) who may be able to provide the works, services, or goods required and/or consult with the Procurement Team to determine if the services required are already procured as set out below:-

- (i) to determine whether the works, services or goods can be provided in-house. If so, the relevant Executive Director may decide, subject to Value for Money/Best Value considerations, not to seek competition but to arrange for the works, services or goods to be provided in-house. The relevant Executive Director(s) will record their decision; or
- (ii) where (i) above does not apply, to determine whether the Executive Director/Service Director would like to submit an in-house bid and if so, then they shall be included in the list of contractors invited to quote/tender under these Rules.
- (iii) existing contracts may be in place for works, services or goods required which are provided in-house or through a Council Local Authority Trading Company. Enquiries with the Procurement Team must be made before commencing a new procurement in relation to this.
- (iv) if the Executive Director able to provide the goods, works or services, decides to proceed in accordance with Rule 8.1 (i) and (ii) or is otherwise invited to tender, the Executive Director of the in-house service may obtain quotations/tenders in respect of supplies of goods, equipment, services or elements of the works that it is proposed are ordered or sub-contracted from a supplier/sub-contractor to enable a quotation/tender to be prepared. The procedures to be adopted for selection of a supplier/sub-contractor shall be those set out in these Rules.
- (v) every such invitation to a supplier/sub-contractor shall include a statement to the effect that:

- The quotation/tender is to be used only for the purpose of compiling a tender or quotation for goods, services or works which the Executive Director intends to submit.
 - There is no obligation on the part of the Council to order any supplies, services or work from the supplier/sub-contractor or any other supplier/sub-contractor.
- (vi) all such bids will be treated as confidential and will not be used other than for the purposes for which they are sought.
- (vii) where goods, services or works are provided by an in-house service to other Council departments, then a service level agreement between the two parties is required, detailing as a minimum:
- The goods, service or works to be provided.
 - The charge to be made.
 - Time period the service will be provided.
 - Roles and responsibilities involved in providing the service.
 - Required performance standards.
- (b) Corporate Contracts
- (i) where a corporate or framework contract may be in place for works, services or goods, this should be utilised rather than sourcing alternative providers in circumstances where the scope, overall estimated value and term of the contract allows.
- (c) Collaborative Procurement Arrangements and Service Level Agreements
- (i) consideration should be given to whether any existing collaborative arrangements or service level agreements would be appropriate. Collaborative procurement arrangements and service level agreements include procurement arrangements with another local authority, government department, public sector bodies, or frameworks available through a public service purchasing consortium.
- (ii) due diligence needs to be carried out to ensure the legal requirements have been met and it is appropriate and suitable for the Council to make use of any such arrangement. Legal Services and the Procurement Team should be contacted for advice in connection with this process.
- (iii) the agreement needs to take into consideration the requirements of any external funders to ensure funding conditions can be met.
- (iv) consideration should be given to ensure the arrangement or agreement contains the relevant minimum requirements as outlined in 8.1 (vii).

8.2 The rules below set out what should be considered by relevant Officers before undertaking any procurement activity. Officers must ensure that:

- (a) they take all necessary legal, financial (including insurance) and other professional advice (for example procurement, health and safety and risk management). Officers should have regard to current Council policies, procedures and standard documentation available on the [Procurement Team Intranet Site](#).
- (b) a contract value is calculated (irrespective of the method of payment) in accordance with public procurement rules (irrespective of whether they apply)

as explained in [Estimating Contract Value](#) guidance. This will include, amongst other things, the whole life costs for the full duration of the contract and any optional period of extension and any maintenance or continuing costs. Contracts should not be artificially divided into two or more separate contracts in an attempt to avoid these Rules or the Regulations which apply to the procurement.

- (c) Officers must ensure that they have obtained the necessary approval(s) to authorise the expenditure, procurement or sale of goods, works or services in accordance with the Council's constitution. (The approval of a delegated officer, Cabinet Spokesperson, or Cabinet, or Council whichever is required in accordance with the Council's Constitution).
- (d) the Council's requirements are clearly documented in the form of a specification and an explanation of the detailed outcomes and performance standards that need to be met to achieve the Council's requirements, as the circumstances dictate. This is an important exercise since this document will form part of the contract documentation.
- (e) every effort is made to make the best of the Council's buying power by aggregating purchases whenever possible. Although consideration should be given in all cases to whether it is appropriate to divide the Council's requirements into smaller lots where there is an economic or social value to the council resulting from the lotting.
- (f) they are satisfied that key stakeholders including Members, have been identified and consulted.
- (g) any risks associated with the procurement/contract are identified, assessed and recorded together with the actions required to manage and maintain them at an acceptable level as part of the procurement and into the contract management phase.
- (h) in relation to contracts led by the Procurement Team a [Procurement Event Approval Document](#) (PEAD) process shall be used as a gateway approach.
- (i) the course of action taken will represent Value for Money for the Council and consideration given where applicable to the requirements of the Public Services (Social Value) Act 2012.
- (j) with the exception of procurement by Area Councils (see Rule 10) existing arrangements are considered and utilised where appropriate and after taking advice in accordance with 6.1 above, such as in-house providers, corporate contracts and existing collaborative procurement arrangements.
- (k) an initial equality impact pre assessment check and an initial data protection impact assessment is carried out to ascertain whether a detailed [Data Protection Impact Assessment \(DPIA\)](#) or Equality Impact Assessment (EIA) is required to inform the Competitive Tendering Procedure and subsequent contract management phase. A link to the EIA toolkit can be found on the [Procurement Team Intranet Site](#). DPIA guidance can be obtained from Information Governance. The requirement to perform the pre assessment applies to all procurements regardless of value to ensure compliance with Data Protection Act (2018) and the Equalities Act (2010). Where the procurement is for Berneslai Homes the specific Berneslai Homes EIA and DPIA approvals process and templates agreed with Equalities and Information Governance will be followed.
- (l) taking all necessary advice, the procurement is properly categorised for the purpose of the Regulations, including whether as works, supplies or services,

and that any Light Touch Services and Provider Selection Regime requirements are correctly identified.

- (m) before quotations/tenders are invited, the Assessment Methodology must be recorded in writing, including the basis for assessing price or cost, any quality criteria, any social value criteria and all weightings. The criteria, sub-criteria and weightings should be made available to bidders simultaneously as early as practicable in the Competitive Tendering Procedure and not later than the invitation to tender/quotation stage. Sub-criteria and weightings cannot be used which have not previously been brought to a bidder's attention unless this is part of a competitive flexible procedure. More information is available on the [Procurement Team Intranet Site](#).
- (n) the Procurement Event Approval Document (Stage three - Procurement Strategy) must include the following for all procurements led by the Procurement Team to align to the Most Advantageous Tender (MAT) methodology:
 - the Price / Quality /Social Value split
 - the reasons for the Price / Quality / Social Value split.

9. Pre-Market Engagement /Market Research

- 9.1 Pre-market Engagement/Market Research should be undertaken prior to any procurement to enable the following:
 - an understanding of the market's ability to deliver
 - to enable feedback from the market on the proposed procurement methodology prior to the procurement
 - raise awareness and gauge the level of interest of the procurement in the market
 - to understand the value of the contract being tendered to ensure the estimated contract value is accurate and Value for Money can be measured.
- 9.2 For any Above Threshold procurement the Procuring Officer must ensure that the Notices in relation to preliminary market engagement and premarket engagement are published in line with requirement of the Regulations at the time of the original tender notice. This would include ensuring the Procurement Team are aware of the requirements to allow it to be published on the Pipeline Notice.

10. Grants

- 10.1 Grants can be considered as a means of funding a third-party organisation to provide specialist services direct to residents or to obtain strategic services from a provider with the particular specialist skills but must not be used as an alternative to circumvent a Competitive Tendering Procedure.
- 10.2 A designated officer should be appointed to manage the grant from conception to completion. The officer shall consult with Legal Services before award of any grant funding, to ensure that correct documentation is put in place and that the grant complies with the requirements of the Subsidy Control Act (In Section 3).

The following should be considered as a minimum:

- if a Grant Agreement is the most appropriate form of documentation to adopt;
- the source of the funding, and compliance with terms and conditions of any external funding body;

- compliance with the Subsidy Control Act (including procedural requirements);
 - clear terms and conditions of the grant between the Council and the recipient setting out:
 - a clear description of the scheme and the aims and objectives of the grant (the purpose)
 - value of the grant and a clear description of how money should be spent;
 - eligible expenditure terms, which prohibit improper expenses
 - data protection / equality issues
 - audit/ assurance
 - agreed outputs/ KPIs/ milestones/ longer term outcomes
 - financial and activity-based reporting and validation
 - payment suspension and claw-back and grant termination.
- 10.3 A Grant allocation should be subject to the same due diligence equivalent to that undertaken in a formal procurement process, including conflicts of interest forms, EIA and DPIA.
- 10.4 Prior to a Grant being issued to a third-party organisation proportionate financial due diligence should also be completed on the organisation.
- 10.5 The designated officer managing the grant must also ensure there are proportionate contract management processes implemented to ensure the Grant is used in the way it was intended.
- 10.6 All Grants shall be recorded on the Council's [Grant Register](#)
- 10.7 In addition, the Subsidy Control Act requires some grants to be published on the Government transparency register within 3 months of the grant being given. Officers should consult with Legal Services and contact subsidy@barnsley.gov.uk to ensure that grants are correctly published where required under the Subsidy Control Act.

11. Concessions

- 11.1 Before any Concession Contract procurement is commenced a Business Case must be produced to demonstrate that a Concession Contract is appropriate and viable.
- 11.2 Advice on commercial arrangements and contract terms and conditions must be obtained from the Procurement Team, Director of Finance (Section 151 Officer) and from Legal Services.
- 11.3 Advice from Legal Services and Procurement Team must be sought prior to commencing any work on compiling a proposal or tender to determine if the Council has the power to enter into the contract.

12. Procurement by Area Councils

- 12.1 The objective of procurement from the Area Councils' commissioning budget is to meet area priorities through contracting with local businesses and voluntary organisations in order to support market development and growth in that sector. Any activity will seek to maximise social value and local content.
- 12.2 Accordingly, Rule 6.1 will not generally apply in the case of procurement from the Area Councils' commissioning budget. However, the Service Director for Stronger, Safer and Healthier Communities shall liaise with Service Directors across the Council at the appropriate time in the commissioning cycle to discuss the

commissioning intentions of Area Councils and areas of potential tension and opportunity.

- 12.3 Where the estimated value of the contract is less than £100,000 and there are sufficient and capable organisations with a presence in the local economy, only those organisations will be invited to tender. In exceptional cases only, where there are no such organisations, the Service Director for Stronger, Safer and Healthier Communities may, at their discretion, invite the relevant in-house service to tender, subject to maximising the local contribution to the supply chain.
- 12.4 Where the estimated value of the contract is £100,000 or more, but not in excess of the Above Regulated Threshold the Service Director for Stronger, Safer and Healthier Communities will invite the relevant in-house service to tender only if there are insufficient local business and voluntary organisations in the local economy. Otherwise, the in-house service will not tender.
- 12.5 Normal contract procedure rules will apply for contracts at or in excess of the Regulation Thresholds.

13. IT Procurement

- 13.1 The Service Director for Customer Information and Digital must approve any new or renewal of a proposed contract for software and/or hardware through a formal request.
- 13.2 In accordance with Council's Financial Regulations, all IT related procurements must have full engagement via Customer Information and Digital Services when requiring new, changes to or retirement of any IT systems, software, services or hardware. All IT procurements under £50,000 will be managed by the Customer Information and Digital Team.
- 13.3 All IT procurements over £50,000 will be managed by the Procurement Team with support from the Customer Information and Digital Team.
- 13.4 The contract management of IT contracts will be led by the service the contract is for, with technical support from the Customer Information and Digital Team as required, available through a request to the [Digital Hub](#).

14. Performance of Contracts – Security

- 14.1 Executive Directors must consider any steps necessary to protect the Council's interests in the event of contractor default, having regard to advice from the Service Director – Law & Governance and the Director of Finance (Section 151 Officer).
- 14.2 This consideration should be based on risk to the Council, taking account of the circumstances, including:
 - the value of the Contract
 - the type of goods, services or works being procured
 - the payment profile of the contract
 - the known financial strength of the suppliers in the market
 - affordability and proportionality

and should assess whether additional security is required in the form of a performance bond, parent company guarantee, contract sum retention, collateral warranties, or (where performance is required by a particular date, and where delay would have financial consequences for the Council) provision for liquidated damages.

15. Nominated/Named Sub-Contractors and Suppliers

- 15.1 Where a sub-contractor or a supplier is to be nominated / named by the Council to a main contractor, quotations or tenders must be invited in accordance with these Rules.
- 15.2 The terms of any invitation for nominated/named sub-contractors or suppliers must be compatible with the main contract and must require that, if selected, the firms would be willing to enter into:
- (a) a contract with the main contractor on terms which indemnify the main contractor against the main contractor's own obligations under the main contract in relation to the work or goods or materials included in the sub-contract
 - (b) an agreement to indemnify the Council in such terms as may be prescribed

16. Debarment List

- 16.1 The Procuring Officer will ensure, regardless of the value and nature of the procurement that the procurement documents include provision to discount any supplier on the Debarment List.
- 16.2 The Procuring Officer must ensure they undertake due diligence on any bids received to ensure that the suppliers are not included on the list and discount any bids received from suppliers that are included. In addition, must ensure that the contract or agreement with the supplier includes provision to terminate the contract should the supplier be added to the Debarment List during the contract term.
- 16.3 The Contract Manager must ensure that due diligence is conducted throughout the contract period to ensure that a contract is terminated with any supplier added to the debarment list.

COMPETITIVE TENDERING PROCEDURE

17. General Rules Relating to Procurement

- 17.1 There is guidance available on the [Procurement Team Intranet Site](#) in relation to all Competitive Tendering Procedures and the relevant thresholds.
- 17.2 The Procuring Officer will be responsible for ensuring that all Notices in relation to the opportunity, pre-market engagement, procurement, contract award and contract management are published in line with transparency requirements for Above Threshold and Regulated Below Threshold requirements, including Health Care Services.
- The procurement [Compliance Matrix](#) is a summary of the tasks to be performed and the notices to publish to ensure a compliant procurement based on the value of the contract and should be followed for every procurement.
- 17.3 Prior to the submission of their bids, bidders have an opportunity, if they consider necessary, to request in writing clarification regarding the Council's requirements via YORtender. Any response from the Council to bidders should also be in writing via YORtender. There are rules that must be followed to ensure fairness and transparency during these clarification phases and details can be found on the [Procurement Team Intranet Site](#).

The main procurement routes for competition are detailed below:

17.4 Contracts up to and including £5,000

For contracts, excluding Health Care Services, where the estimated value is up to and including £5,000 (taking into account the whole life cost of the Contract including extensions and/or variations) a Procuring Officer shall proceed in a manner which ensures Value for Money and the efficient management of the service.

The requirement can be progressed via a single quotation.

There is no requirement to publish this contract on the Contract Register or Contracts Finder.

17.5 Contracts between £5,000 and up to and including £50,000

For contracts, excluding Health Care Services, where the estimated value is above £5,000 and up to £50,000 (taking into account the whole life cost of the Contract including extensions and/or variations) a Procuring Officer shall proceed in a manner which ensures Value for Money and the efficient management of the service. Where possible this process shall prioritise the placing of orders with local businesses under the Council's social value policy.

The Procuring Officer should ensure that the contract has been scored prior to any Competitive Tendering Procedure in line with the Council's [Tiering Tool](#) to assess the level of contract management required once a supplier is appointed and develop a Contract Management Plan, as relevant. ~~Templates~~ Contract management documents are available on the [Procurement Team Intranet Site](#).

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

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

For contracts, excluding Health Care Services, where the estimated value is above £50,000 and up to and including £100,000 for goods and services and £250,000 for works (taking into account the whole life cost of the Contract including extensions and/or variations) the Procuring Officer must seek to achieve competition and for that purpose invite at least three quotations via YORtender.

The Procuring Officer should ensure that the contract has been scored prior to any Competitive Tendering Procedure in line with the Council's Tiering Tool to assess the level of contract management required once a supplier is appointed and develop a Contract Management Plan, as relevant. The toolkit for Contract Management can be found on the [Procurement Team Intranet Site](#).

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

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

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

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

When inviting suppliers to quote, the officer responsible should ensure they rotate between suppliers where the market permits and allows to ensure a fair, open and transparent process is applied.

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

17.7 **Contracts between £100,001 and up to Regulation Thresholds for goods and services and £250,001 and up to Regulation Threshold for works**

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

For procurements, excluding Health Care Services, above £100,000 for goods and services and **£250,001 for works** up to Regulation Threshold an open tender procedure must be followed unless a Framework/Dynamic Purchasing System/Dynamic Market is deemed suitable for the requirements. This procedure is a single stage procurement advertised openly without a shortlisting stage. Service-specific questions are permitted but must be relevant to the subject matter of the procurement and proportionate.

When publishing to the open market and the contract is advertised, and suppliers invited to submit a tender by a certain date (being not less than 14 calendar days from the date of the notice). When forming the procurement strategy consideration should be given to the timescales allowed for responses to ensure all suppliers have adequate time to complete their tender submission, maximising this where possible to allow time for a detailed submission.

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

17.8 **Contracts Above Regulation Threshold**

- (a) Where a contract, excluding those specifically for Health Care Services, is estimated to be equal to or exceeds the relevant threshold the Regulations shall apply:

The Regulation Thresholds change every two years and are set **inclusive of VAT**. The [Procurement Team Intranet Site](#) is kept up to date with details of the current thresholds and provides guidance on the public procurement rules. Further help and guidance can be obtained by contacting the Procurement Team.

- (b) Publication of all Notices for Above Threshold procurements will be performed by a member of the Procurement Team.
- (c) For Above Threshold procurements, the Competitive Tendering Procedure followed should be aligned to the Regulations applicable at the time of the procurement and include in the tender documents reference to the regulations and the procedure which is being used for the procurement.

17.9 **Direct Award**

- (a) Where permissible under the Regulations a Direct Award will be led by the Procurement Team and in consultation with Legal Services.
- (b) No contract will be entered into as a Direct Award prior to the publication of the applicable Notices.

18. External Frameworks/Dynamic Purchasing System/Dynamic Markets

- 18.1 Where it is considered that the utilisation of an existing external Frameworks/Dynamic Purchasing System/Dynamic Market as a call off, e.g. from Crown Commercial Services, another public body or a centralised procurement authority such as YPO, ESPO, NEPO etc. is the most appropriate means to meet the Council's requirements, the agreement must be used in the way in which it was advertised and in line with its own terms and conditions.
- 18.2 Where such relevant Frameworks agreements contain a number of different suppliers able to provide goods, services, or works, unless there is a specific ability to make an award without competition under the Frameworks agreement a mini competition between all awarded suppliers should be undertaken.
- 18.3 Where an award without competition under an agreement is progressed, a Best Value Form should be completed for up to £100,000 for goods and services or £250,000 for works or a PEAD for contracts above these values and reference should be made to the weighting and criteria for Direct Award under the agreement.
- 18.4 The Council may need to complete an access agreement prior to utilisation of the framework. Legal Services and the Procurement Team should be consulted before this is signed.
- 18.5 The Procuring Officer and Contract Manager must ensure the Notices required for the call off are adhered to for the procurement and contract period, unless the procurement is for Health Care Services which must adhere to the requirements of the PSR.
- 18.6 Where the use of an existing external Frameworks/Dynamic Purchasing System/Dynamic Market can be used for Health Care Services the processes and notices required under PSR must be followed.

19. Internal Frameworks/Dynamic Purchasing Systems/Dynamic Market

- 19.1 Frameworks, Dynamic Purchasing Systems and Dynamic Markets shall be procured in accordance with these Contract Procedure Rules and Regulation Thresholds. Procedures described by the Regulations shall apply to all aspects of the procurement and operation of the Frameworks/Dynamic Purchasing System/Dynamic Market including:
- the procurement methodology
 - any orders placed under the Frameworks/Dynamic Purchasing System/Dynamic Market
 - re-opening of competition or call off competition between all contractors/suppliers on the Framework/Dynamic Purchasing System/Dynamic Market.
 - the duration of a Frameworks, the Dynamic Purchasing System or Dynamic Market (As the period stated in the tender documents)
- 19.2 All call offs / mini competitions from Frameworks/Dynamic Purchasing Systems/Dynamic Markets must be performed on YORtender and linked to the overarching agreement.
- 19.3 All call offs / mini competitions are subject to the same Notices, unless the procurement is for Health Care Services.
- 19.4 Where the use of an existing external Frameworks/Dynamic Purchasing System/Dynamic Market can be used for Health Care Services the processes and notices required under PSR must be followed.

20. Health Care Services Procurement under PSR

20.1 The Procuring Officer will review the PSR and identify which procedure shall be used for the specific Health Care Service contracts irrespective of value.

- a) Direct Award A (as prescribed by PSR Regulation 7)
- b) Direct Award B (as prescribed by PSR Regulation 8)
- c) Direct Award C (as prescribed by PSR Regulation 9)
- d) The Most Suitable Provider Process (as prescribed by PSR Regulation 10)
- e) The Competitive Process (as prescribed by PSR Regulation 11)

Such identified processes shall be used for the invitation and/or contract award in accordance with the requirements of the PSR.

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

21.1 All such applications for an exception to competition should be in accordance with the relevant provisions of the Regulations.

21.2 The Procurement Team shall maintain a register of all such exceptions at any value.

21.3 In compliance with the Local Government Transparency Code, all contracts created after an exception to competition has been approved must be promoted to the Council's [Contracts Register](#). In addition, all contracts awarded above £25,000 must have a contract award notice publicised on Contracts Finder.

21.4 In exceptional circumstances and considering all the information available an accountable Executive Director may decide that it is justified to invite less than three quotations in a particular instance or type of transaction.

21.5 Where an exception to the requirement for competition is sought a [Waiver to Competition Form](#) must be completed by the Procuring Officer and signed off by the accountable Service Director and Executive Director prior to the procurement and contract being agreed.

21.6 Regardless of the exception Council's governance processes must be complied with, e.g., Equality Impact Assessment (EIA), Data Protection Impact Assessment (DPIA) and the relevant approval to spend obtained prior to commitment.

21.7 The relevant Executive Director shall ensure the goods/services and/ or works to be procured subject to exception to competition have a fully detailed specification and the Council terms and conditions agreed with the supplier.

21.8 When completing the [Waiver to Competition Form](#), the Procuring Officer should explain their reasons for this exception to competition and should be progressed for signatures.

21.9 If the waiver is being progressed based on strategic or tactical reasons the Procurement Team must be consulted prior to signatures being sought.

21.10 Exceptions covered by a [Waiver to Competition Form](#) up to and including £100,000 **must** be reviewed and signed by the relevant Service Director prior to being signed by the relevant Executive Director. Completed waivers should be emailed to procurement@barnsley.gov.uk

- 21.11 The Procurement Team will record and allocate a waiver reference number which will be provided to the Procuring Officer to be added to the purchase order and the project file on YORtender.
- 21.12 The Procuring Officer will include in the waiver confirmation of how Best Value is being sought.
- 21.13 The Procuring Officer will be responsible for ensuring that a contract is executed with the awarded supplier, where relevant and that Notices are progressed in line with transparency requirements under the Regulations applicable at the time of the procurement.
- 21.14 The Procuring Officer will be responsible for ensuring that the relevant contract management processes and documentation are completed, including Tiering of the contract.
- 21.15 Exemptions are not required for Health Care Services, regardless of value.

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

- 22.1 Where an exception to the requirement for competition is sought a [Waiver to Competition Form](#) must be completed by the Procuring Officer and signed off by the accountable Service Director and Executive Director prior to the procurement and contract being agreed.
- 22.2 The relevant Procuring Officer shall prepare a waiver report in the form set out in the [Waiver to Competition Form](#) explaining the proposed course of action and the reasons why a waiver to these Rules is required (see Rule 22.11 below).
- 22.3 The report must be submitted by the Procuring Officer in the following order:
- Accountable Service Director
 - Accountable Executive Director
 - Service Director – Law & Governance
 - Director of Finance (S151 Officer).

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

The Procuring Officer must ensure an electronic version of the report is sent to procurement@barnsley.gov.uk

- 22.4 The Procurement Team will record and allocate a waiver reference number which will be provided to the Procuring Officer to be added to the purchase order and the project file on YORtender.
- 22.5 The Procuring Officer will include in the waiver confirmation of how Best Value is being sought, except where the exception is a variation to an existing contract where a [Procurement Event Approval Document – Variation](#) will be completed by the Procurement Team at the point the waiver reference is issued.
- 22.6 The procedure set out in Rule 22 is in addition to any other approval that is required, for example to incur the expenditure for the duration of the contract, in accordance with the Council's Constitution.
- 22.7 The reasons why an exception to competition is justified, may include the circumstances below, provided that such an approach is consistent with the Council's duty to obtain Value for Money and policies.

- 22.8 The Procuring Team will be responsible for ensuring that a contract is executed with the awarded supplier, where relevant and that the publications to Contracts Register and Contracts Finder are progressed in line with transparency requirements.
- 22.9 The Procuring Officer will be responsible for working with the Procurement Team to ensure that the relevant contract management processes and documentation are completed, including Tiering of the contract and a Contract Manager allocated.
- 22.10 Exemptions will be subject to the following conditions;

(a) No Available Competition

The relevant signatories can approve the reason for the waiver is due to no available competition.

This can occur in a limited number of circumstances as in the following:

- the purchase of proprietary or patented goods or materials only from one firm, and where no equivalent or no reasonably satisfactory alternative is available
- the execution of works or supply of services of a specialised nature which can only be carried out by only one firm and where no equivalent or no reasonably satisfactory alternative is available
- the purchase of a named product required to be compatible with an existing installation for which no equivalent or no reasonably satisfactory alternative is available
- the appointment of a developer to exercise functions of the Council under Section 278 of the Highways Act 1980
- the appointment of specialists on a short-term requirement to bridge a skills shortage in the Council's organisational structure
- the instruction of, advice from, or service provided by Counsel.

(b) Emergency Circumstances

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

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

(c) Strategic/Tactical Procurement

The relevant Executive Director can approve a waiver where the Procuring Officer and the relevant Service Director, the Procurement Team and Legal Services consider a waiver to competition for the following reasons:

- aggregating different contracts together but an extension is required to align contract start dates
- due to shortage of resources to enable a procurement event to be properly project managed which could not have been foreseen or managed
- would cause significant inconvenience or substantial duplication of costs for the Council.

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

23. Exceptions to Requirements of Competition (where the Regulations do apply)

23.1 Where the Regulations apply, they must be complied with. Further advice and guidance can be sought on the [Procurement Team Intranet Site](#)

23.2 Where the Regulations apply there is a requirement to ensure notices are published before any contract is executed to ensure transparency and compliance with the Regulations. The Procurement Team must be engaged to ensure these notices are published.

24. Submission of Bids

24.1 Submissions for projects up to and including £50,000

The Executive Director must ensure that there is a system in place which can demonstrate the fairness and transparency of the process and records are saved electronically and kept in accordance with the Council's [Records Retention Policy](#).

24.2 Submissions for projects above £50,000

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

24.3 Late Submissions /Quotations/Tenders

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

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

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

25. Assessment of Quotations and Tenders

25.1 Assessment and evaluation of quotations/tenders must be completed in accordance with the assessment methodology set out in the quotation / tender documents provided to suppliers to ensure the process is performed in open, fair and transparent manner.

25.2 Records should be kept of the assessment and evaluation process, which should include criteria, sub-criteria, weightings, individual and consensus scoring including completed moderation forms (with electronic confirmation or signed by the individuals involved in the evaluation) clarifications and reasons for decisions. Records should be saved electronically (PDF format) and stored on YORtender and SharePoint and in accordance with the Council's Records Retention Policy.

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

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

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

26. Due Diligence

- 26.1 Due diligence on a supplier prior to award on things like insurance, accreditations, financial stability, professional registrations, is essential to mitigate risk to the Council.
- 26.2 Due diligence on all bidders should be performed for every contract, regardless of value and route to procure to mitigate risk to the Council, in line with the Regulations which are applicable at the time the tender notice is published.
- 26.3 Financial checks on all successful bidders should be performed and the detail of the check will vary on the risk involved to the Council and value of the contract. No tender should be accepted from a bidder who has been declared insolvent or bankrupt.
- 26.4 Where a financial check is required then the Procuring Officer must be able to demonstrate that the risk to the Council from failure to deliver will have minimal repercussions and the awarded supplier is solvent.
- 26.5 Procuring Officers for procurements which are below the thresholds for procurement led by the Procurement Team should refer to the [Procurement Team Intranet Site](#) for further guidance and documentation to be used to undertake due diligence checks.
- 26.6 The Contract Manager will be responsible for ensuring ongoing due diligence on the awarded supplier during the term of the contract in line with the Contract Management Plan.

27. Errors in Quotations and Tenders

- 27.1 Certain tender documentation will prescribe the rules to be adopted in relation to errors in quotations/tenders. In other cases, the Council will advise bidders of the approach that will be taken.
- 27.2 Errors in quotations/tenders shall be dealt with in one of the following ways:
 - (a) the bidder shall be given details of the error(s) found during the examination of the quotation/tender and shall be required at the sole option of the Council to confirm without amendment or withdraw the quotation/tender; or
 - (b) amending the quotation/tender to correct genuine error(s) provided that, in this case, apart from these genuine errors no other adjustment, revision or qualification is permitted.
- 27.3 All amendments shall be fully recorded with justification for the action taken.
- 27.4 Clarification requests should be requested in writing via YORtender and any response from bidders should also be in writing via YORtender. Where necessary, advice should be sought from the Procurement Team and Legal Services.

28. Abnormally Low Tenders

- 28.1 Where a tender appears abnormally low it may not be rejected without:
 - giving the bidder an opportunity to explain the tendered price (such explanation to be given in writing).
 - considering the evidence provided, and demonstrating the bidder will not be able to provide the bid as detailed sustainably without detriment to the Council
 - obtaining the written approval from the Head of Strategic Purchasing Procurement and Contract Management, the Service Director – Law & Governance and the Director of Finance (S151 Officer).

28.2 Post Tender Negotiations (Negotiations after receipt of formal bids and before award of contract)

- 28.3 Where the Regulations apply, they must be followed. Post tender negotiations are not allowed in Above Threshold Competitive Tendering Procedure or Competitive Tendering Procedures unless the procedure used allows and the tender documents clearly outline how and when negotiation will occur.
- 28.4 Where the Regulations do not apply then post tender negotiations will be only permissible where the tender procedure stated, and the tender documents has allowed the use of such negotiations.
- 28.5 In exceptional circumstances, where the Service Director – Law & Governance considers that post tender negotiations are in the Council's interests and may achieve added value then post tender negotiations may be appropriate.
- 28.6 Post tender negotiations where permissible, must only take place where they do not distort competition or disadvantage any bidder. The process should be transparent and non-discriminatory and ensure bidders are treated equally.
- 28.7 Post tender negotiations with any bidders must be in accordance with the following conditions:
- (a) approved by the accountable Executive Director in consultation with the Head of Strategic Purchasing, Procurement and Contract Management and the Service Director – Law & Governance and are carried out in accordance with the law.
 - (b) written records of the negotiations are kept, and a clear written record of the added value obtained by the post tender negotiations is incorporated into the contract with the successful bidder.

29. Acceptance of Quotations and Tenders and Award

- 29.1 The Council is not bound to accept any quotation or tender and this must be made clear to bidders in writing at the beginning of the process and as appropriate throughout.
- 29.2 Quotations and tenders may be accepted on behalf of the Council by the relevant Executive Director provided they have been sought, evaluated and are to be awarded fully in compliance with these Rules and the necessary approval has been obtained.
- 29.3 The Procuring Officer must ensure an Assessment Summary which is aligned to the Assessment Methodology is included in the notification to bidders.
- 29.4 In relation to contracts up to £50,000 where the quotations have been sought outside of YORtender, once a decision to award a contract is made, all bidders must be notified at the same time, as soon as possible, in writing giving reasons for the decision. Please see the [Procurement Team Intranet Site](#) for guidance.
- 29.5 In relation to all contracts above £50,000 and those below £50,000 where quotations are sought in YORtender, once a decision to award a contract is made, all bidders must be notified at the same time, as soon as possible, in writing via YORtender of the intention to award the contract to the successful bidder, giving reasons for the decision. Please see the [Procurement Team Intranet Site](#) for guidance.
- 29.6 For all contracts tendered in accordance with the Regulations applicable at the time the tender notice was published, the relevant Notices must be published, and the standstill period must be observed between the decision to award being notified to all bidders and entering into a contractually binding agreement with the successful

bidder. Where possible this standstill should be applied to the Regulated Below Threshold procurements to align to best practice.

- 29.7 For all Above Threshold Procurements, the Notices to bidders must be published in the order of the Regulations applicable at the time the initial notice was published. Please see the [Procurement Team Intranet Site](#) for guidance. Procuring Officer for procurements which are below the thresholds for procurement led by the Procurement Team should refer to the [Procurement Team Intranet Site](#) for further guidance and documentation to be used for acceptance of bids and award of contracts.
- 29.8 If an unsuccessful bidder challenges the decision to award the contract, (if the contract has not already been awarded), it shall not be awarded until the advice of the Service Director – Law & Governance has been obtained.
- 29.9 Unsuccessful bidders may request a debrief which should be provided to them in writing. Further information is available on the [Procurement Team Intranet Site](#).

30. Record of all Procurement Documentation

- 30.1 A full audit trail of the whole Competitive Tendering Procedure including all internal documentation (e.g. Best Value Form/Equality Impact Assessment/Data Protection Impact Assessment) shall be maintained in the relevant tender file within the YORtender e-tendering system (If applicable) and on SharePoint.

31. Abandoned Procurement

- 31.1 The Procuring Officer must ensure that Notices in relation to any procurement which is abandoned prior to award are published in line with the Regulations applicable at the time the tender notice for the original procurement was published.

CONTRACT FORMALITIES

32. Contracts

What is a Contract?

- 32.1. These Contract formalities apply when the Council is entering into Contracts covered by the Contract Procedure Rules. A Contract should be presumed to exist any time the Council makes an agreement with a person or legal entity which;
- (a) commits the Council to provide something of value (such as payment, security, delivery of a project, or the provision of services).
 - (b) in return for something of value (e.g. money, grant funding, goods, services, promises to do something).
- 32.2. Examples of Contracts include agreements to loan, sell or purchase goods or services, licensing agreements, purchase orders, memorandums of agreement, service level agreements with external parties (where they are intended to be binding agreements), access agreements, non-disclosure agreements, works/construction contracts (JCT, NEC, etc), framework agreements, data processing / joint processor agreements, dynamic purchasing agreements,

- 32.3. If Officers are in any doubt as to whether a Contract is being created, they should contact Legal Services promptly for guidance prior to agreeing or signing anything.

Form of Contract

- 32.4. Contracts should be prepared using either the Council's standard terms and conditions templates provided by Procurement Team or Legal Services, or the terms of an approved framework agreement. Legal Services are responsible for maintaining a set of appropriate templates together with guidance on their use.
- 32.5. If the Council is unable to use such terms and is asked to amend them, or to utilise the terms and conditions of contract submitted by a supplier or external party, such terms shall not be accepted without advice or review from Legal Services.
- 32.6. The use of standard form construction contracts (such as RIBA, RICS, JCT and NEC) is permitted for Works Contracts or professional services contracts associated with works – e.g. contracts for construction and pre-construction services, design services, building works, architectural services, quantity surveying, employer's agent, and engineering services. The Procuring Officer must ensure that consideration is given to the appropriate form of Contract for the type of work, and with respect to the customisable elements of such standard terms including Construction Industry Scheme requirements, pricing methodology, milestones, compensation events, liquidated damages, bonds/guarantees, retentions – to ensure that the risk profile of the Contract is appropriately managed in the drafting phase. If the Procuring Officer does not have the relevant expertise and experience in relation to these standard forms of contract to inform the drafting of the terms, advice must be sought from the Procurement Team and Legal Services prior to issue of the contract.
- 32.7. If the Procuring Officer is in any doubt as to which type of Contract to use, they should contact the Legal Services team for guidance.
- 32.8. The Executive Director for the applicable service must ensure that every contract clearly sets out;
- (a) the works, goods, services, materials, matters or things to be carried out or supplied.
 - (b) the price to be paid and/or the amounts and frequency or the method of calculation of contract payments with a statement of discounts or other deductions.
 - (c) the time(s) within which the contract is to be performed.

- (d) such other matters as the legal and procurement leads supporting contract negotiation consider necessary for legal and regulatory compliance.

When to enter into Contract

- 32.9. Contracts must be executed (Signed and dated) prior to the commencement of any works, service or supply of goods. Exceptionally, a letter of intent may be utilised to enable forward planning and mobilisation activities, but it must set out the scope and extent of any preparatory works to be undertaken by the contractor, be value capped and time limited. Proceeding under a letter of intent can give rise to risks and is subject to prior written approval from the Head of Legal Services and the relevant Executive Director.

Early Engagement on Contract Requirements

- 32.10. On non-routine matters (larger scale or novel projects, high profile contracts, or contracts requiring Cabinet approval) the Procuring Officer must engage with Legal Services and the Procurement Team early and proactively in the development of any business case and procurement and contract management process.

- 32.11. The purpose of such inputs is to:

- (a) advise on legal and procurement issues which will shape the project and influence strategy (such as constitutional requirements, regulatory compliance, form of contract, route to market, dependencies, contract management implications, risks, and market context).

- (b) highlight and anticipate any external advice which may need to be procured or planned as necessary.

- (c) help the Council to plan realistically with respect to timescales and resources needed for project completion.

- (d) speed up the eventual tendering, contract placement, and execution process by identifying and addressing issues in advance

Authority to Execute a Contract

- 32.12. All Contracts entered into by the Council must be in writing.

- 32.13. All Contracts entered into by the Council must be approved prior to execution and evidence of approval must be provided in the format set out in **Annex A** to this CPR.

- 32.14. In providing the approvals referred to above, the Procuring Officer must as appropriate consult with support services (legal, procurement, finance etc) and the

Senior Responsible Officer and Budget Manager within their own service to satisfy themselves that the Contract is ready for execution and should seek supporting information or clarification where required.

Contract Execution

- 32.15. The Council's policy is that it will be the last signatory on all Contracts, except as may be advised by the Head of Legal Services or their delegate.
- 32.16. As standard Contracts should be executed under hand and without the requirement for a seal, except for Contracts for works or those which have design liability with the supplier which should be executed as a deed.
- 32.17. All Contracts are to be executed as follows:
- (a) (preferably) through the use of a controlled electronic signature system;
 - (b) Or through the addition of wet signatures.
- 32.18 Save as set out in **Annex B**, the following process applies to Contract execution.
- 32.19 The final unsigned version of the Contract should be provided to Legal Services for proofing prior to sending to the other party, and the Procuring Officer is responsible for obtaining a final signed version of the Contract from the other Party(ies).
- 32.20 Legal Services may mandate changes to the signature block in order to meet legal requirements, for example to ensure the parties are correct, the signature clause has operative effect, the number of signatories is sufficient, to incorporate the use of the Council's Seal, or to provide that a Contract must be executed as a Deed.
- 32.21 Prior to Contract execution by the Council, the Procuring Officer must contact Legal Services by email to legalservices@barnsley.co.uk headed "Contract Execution – [Title of Contract]"), enclosing:
- a clean, complete, copy of the Contract signed by the other Parties; and
 - a completed authority for the Execution of the Contract using the form set out in **Annex A** to this CPR.
 - copies of the approvals referred to within the form in Annex A.
- 32.22 All Contracts are to be executed by Service Director of Law and Governance (or an Officer within Legal Services with the delegated signing authority of the Service Director of Law and Governance). In any circumstances where a second signatory or witness is required a further signature shall be provided by an Officer within Legal Services who is authorised by the Service Director of Law and Governance to be a co-signatory or witness.

32.23 Use of the Council's Seal is strictly controlled by and subject to the approval of the Service Director of Law and Governance or an Officer within Legal Services with the delegated signing authority of the Service Director of Law and Governance). The Service Director of Law and Governance (or their delegate) may mandate, at their discretion, the sealing of documents, witnessed by a representative of Legal Services, as an exception to the signing requirements.

33 Contract Management

33.1 Executive Directors must;

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

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

33.3 The Contract Manager is responsible for:

- (a) Ensuring that the contract is carried out in accordance with its terms and conditions;
- (b) Ensuring that an appropriate mobilisation and implementation plan (as defined in the procurement) is followed;
- (c) Monitoring the supplier's performance, ensuring compliance and escalating issues in accordance with the contract and Council governance arrangements;
- (d) Monitoring cost and value for money requirements including contract expenditure against budget;

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

33 Contract Variations

- 33.1 Funding must be identified before any Contract variation (regardless of value) is formally agreed. Modification of an existing Contract which will require the Council to provide additional funding is approved in accordance with the Council's Financial Regulations and the Executive Director will need to ensure Value for Money and strategic need in line with Council priorities are considered in the variation.
- 33.2 An Above Threshold existing contract may only be varied in accordance with the Regulations which were applicable at the time of the original procurement when the tender notice was issued, including where there are specific provisions provided for in the Contract.
- 33.3 A variation not provided for in an existing Contract, which has the effect to materially change the contract must be approved by Procurement Team and Legal Services.
- 33.4 Where the Regulations apply the Contract Manager must ensure that the Notices required are published.
- 33.5 All variations to a contract must be recorded and signed by both parties (including numbering and dated) and provided to the supplier to ensure a full audit trail is maintained.
- 33.6 For contracts above £50,000, or where the variation will increase the value of the overall contract to above £50,000 all variations must be completed in accordance with the [Procurement Event Approval Document – Variations](#) to ensure that all due diligence checks are performed for compliance purposes and the sustainability of the contract. For contracts which are originally below threshold, but due to a modification become Above Threshold the Procurement Team must be consulted to ensure that the modifications are permissible in line with the Regulations for a Convertible Contract.
- 33.7 Contracts for Health Care Services must be extended in accordance with the PSR.

34 Contract Extensions

- 34.1 An existing contract may be extended in accordance with specific criteria as outlined in the Regulations.
- 34.2 Contract extensions must not materially change the original scope of the contract. Advice should be sought from Procurement Team and Legal Services to ensure any extension proposed complies with procurement regulations and the Executive Director will need to ensure Value for Money and alignment to Council priorities are considered.
- 34.3 An extension not provided within the existing contract will be subject to exception to competition and must be supported by a waiver approved by the accountable Executive Director.
- 34.4 For contracts above £50,000, all contract extensions must be completed in accordance with the [Procurement Event Approval Document – Extension](#) to ensure that all due diligence checks are performed for compliance purposes and the sustainability of the contract.
- 34.5 The Procuring Officer must ensure that Notices are updated to reflect the extension of the contract to comply with transparency requirements.
- 34.6 Contracts for Health Care Services must be extended in accordance with the PSR.

35 Contract Novations

- 35.1 A contract should not be novated to another provider unless it complies with Regulations applicable at the time of the tender notice was published for the original procurement.
- 35.2 Where the Regulations apply the required Notices applicable to the Regulations at the time of the tender notice was published for the original procurement. Guidance should be sought from the Procurement Team.
- 35.3 The Procurement Team and Legal Services must be consulted on all contract novations prior to agreement with the supplier.
- 35.4 Due diligence must be performed on all novations prior to any agreement to the novation to ensure the Council is protected.
- 35.5 All contract novations must be completed in accordance with the [Procurement Event Approval Document – Novation](#) to ensure that all due diligence checks are performed for compliance purposes and the sustainability of the contract.

36 Contract Terminations

- 36.1 If there is a requirement to terminate a contract, for any reason, other than expiry, the Procurement Team and Legal Services must be consulted prior to any action to progress the termination formally.
- 36.2 The Contract Manager must ensure Notices in relation to contract termination, including the agreement ending at its agreed contract end date are published in line with transparency requirements applicable under the Regulations applicable at the time the original tender notice was published.
- 36.3 For contracts above £100,000, all contract terminations must be completed in accordance with the Procurement Event Approval Document – Termination to ensure that all due diligence checks are performed for compliance purposes.

ANNEX A – AUTHORISATION FOR CONTRACT EXECUTION

THE AUTHORISATION FORM FOR CONTRACT EXECUTION IS MAINTAINED ON THE LEGAL SERVICES AND [PROCUREMENT TEAM INTRANET SITE](#)

ANNEX B: SERVICE DELEGATION – CONTRACT EXECUTION

Subject to the Delegation Conditions, responsibility for Contract execution (signing and dating) is delegated to the relevant Budget Manager where it falls within either of these delegations set out below;

Delegation 1: Bronze Tier, Low Risk Contracts up to £100,000

The delegation applies to Contracts which have a total lifetime value of up to £100,000, which are placed against approved Council terms (an unchanged Council template document, or terms which have been reviewed and approved by Legal Services) and are assessed by the Procuring Officer as a Bronze contract which does not share personal data and is not classed as a complex contract.

Delegation 2: Placing demand on existing Contracts

This delegation applies where a Contract and its call off schedules has previously been approved and executed which anticipated the placement of a series of purchase orders, call-off orders or work packages against the terms of the Contract (for example a framework agreement, or a works contract for a series of phases).

This does not include variations to contracts.

Delegation 3: Adding Parties

This delegation applies where parties are being added to a Framework agreement or Dynamic Market / Dynamic Purchasing System where the underlying Contract has been previously approved.

This does not include variations to contracts.

Delegation Conditions

The delegations above only apply where following conditions are satisfied:

- i) execution does not require the use of the Council's seal or execution as a deed.
- ii) the parties (legal entities) to the contract are clearly understood and accurately reflect the underlying Contract / tender process.
- iii) no additional terms and conditions are inserted or amended by the Parties (if changes are being made, the contract variation process should be followed).
- iv) any purchase orders / work packages have existing budgetary authority, and clearly reference the agreed terms of the Contract.
- v) for project milestones, the relevant Contract Manager (as applicable) is consulted to verify that conditions for the progression of projects, works or development contracts (KPIs, milestone criteria, grant conditions, dependencies, payments, etc) have been fulfilled.

- vi) the value of the Contract remains within the approved value of the contract, and therefore remains within the procurement thresholds anticipated within the tender process.
- vii) contracts are executed (if applicable) in accordance with the standard execution clause included within the Contract.
- viii) for new parties, they have been appointed following a compliant procurement / tendering process in accordance with the requirements of the CPR and the legal entity is identical to the bidding party.
- ix) the Procuring Officer has signatory authority to place such demand within the scheme of delegation established under 1.7(f) of the Financial Procedure Rules.

It must be noted that;

- (a) All other requirements of the Rules continue to apply, including but not limited to the tendering process, value for money, notices, transparency, conflict or interests, data protection and equality impact assessments.
- (b) Where the delegations apply, these Contracts can be executed by the relevant Budget Manager in line with their delegated authority.
- (c) The Executive Director for the applicable service area is responsible for ensuring that Procuring Officer and Budget Managers are suitably briefed on their responsibilities, and that complete and accurate written records of all approvals / delegated authority and Contract documentation are maintained on the Contracts Register for audit and governance purposes.