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Corporate Procurement Strategy

for the

London Borough of Barnet



**European Services
Strategy Unit**

(Continuing the work of the Centre for Public Services)



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European Services Strategy Unit

(Continuing the work of the Centre for Public Services)

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The **European Services Strategy Unit** is committed to social justice, through the provision of good quality public services by democratically accountable public bodies, implementing best practice management, employment, equal opportunity and sustainable development policies. The Unit continues the work of the Centre for Public Services, which began in 1973.

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Introduction

Purpose of this report

The purpose of the Corporate Procurement Strategy is to set out the vision and strategic aims, which direct and govern the Council's procurement activities. This document outlines the policies, toolkits and processes that should be used to deliver the strategy. It sets out the strategic aims and the processes and procedures to ensure that an effective and consistent approach to procurement is taken across the Council.

What is Procurement?

Procurement is the process by which the Council obtains goods, services and works. Procurement is more than just purchasing. The procurement process covers a full lifecycle of activities starting with the identification of needs, through to evaluation, purchasing and contract management.

Procurement can range from the day-to-day purchasing of commodities to purchasing key strategic items (such as large capital assets), commissioning a service or buying an entire service. Goods and services can be provided by internal or external providers and there are a number of different models for provision of services, such as private finance initiatives and public private partnerships.

Why is Procurement important?

All of our Council services involve procurement. There is a direct link between good procurement and the delivery of high quality and cost effective services to our customers.

The importance of getting procurement right is reflected in national strategies:

The Gershon Efficiency Review (2003-2004) carried out by the Government identified procurement as one of the most important areas for efficiency gains.

The National Procurement Strategy (2003-2006) for Local Government set out how councils can improve the delivery and cost effectiveness of high quality services through more effective, prudent and innovative procurement practices. More efficient procurement practices and partnership working can release resources to the frontline.

Councils have a duty to provide "value for money" and must continually review and improve services.

The Regional Improvement and Efficiency Partnerships (Capital Ambition) have joint working on procurement high on their agenda.

The Vision and strategic aims

Barnet's Corporate Plan 2008/9 – 2012/13 describes the vision and priorities:

"Delivering high quality public services in the borough is only possible through partnership between Barnet citizens and the wider public sector. This means working with our partners to sustain Barnet as a global city-suburb contributing to London's resilience in this time of economic uncertainty and its prosperity when better economic conditions return. It also means ensuring that access to public services is easy and the experience of service is a valuable one for citizens."

This vision through six priority outcomes:

A successful city suburb

We will enable the borough to grow sustainably, by supporting prosperity while protecting and enhancing the things that our residents cherish.

Strong and healthy

We want our residents to feel able to make a contribution to and influence decision-making in their area, and to live in an environment that supports good health for all.

Promoting independence

We are committed to supporting vulnerable adults to live independent, active lives. We will support them in this through high quality services offering choice and flexibility.

A bright future for children and young people

We are committed to maintaining and building on our successful educational record, while also addressing the challenges faced by the minority of children and young people who do less well or have to overcome significant obstacles in their lives.

Clean, green and safe

We will deliver positive sustained improvements against the most significant priorities identified by our residents including crime, fear of crime and clean streets.

More choice, better value

We will deliver value for money for our residents.

Delivering the Corporate Procurement Strategy

The Corporate Procurement Strategy is a key part of our commitment to ensure that we provide accessible and responsive services, which are cost effective. We will ensure that each service obtains the goods and services it needs to operate effectively from the most appropriate and economically advantageous source.

The Corporate Procurement Strategy will be delivered by:

1. Using and developing the policies, processes and toolkits set out in this document.
2. Regularly reviewing progress on the implementation of the Corporate Procurement Strategy to ensure that it:
 - Helps to deliver value for money and improvements in service delivery arrangements;
 - Is planned and undertaken in a structured, controlled and co-ordinated way;
 - Contributes to delivery of the budget, medium term plan and efficiencies targets across the Council;
 - Utilises and exploits technology to improve services and generate efficiencies; and
 - Establishes and develops collaborative opportunities, partnerships and new and more effective ways of working.

Efficiency and Value for Money

We will use the “four Cs” - challenge, compare, compete and consult - to deliver best value across all of our services.

We will focus on identifying efficiencies and delivering value for money throughout the procurement process. For example, options appraisal is the stage of the process that requires the most detailed work and innovative thought about service provision. It is critical that the appraisal is based on firm foundations of service definition and market intelligence.

We will ensure that external consultants will only be used when necessary and in accordance with our guidelines and Financial Regulations.

Doing Business Electronically

We are committed to e-procurement - doing business electronically. We will use information and communications technology to improve accessibility and the efficiency and effectiveness of our activities.

We will also encourage our partners and suppliers to do business electronically to reduce costs and improve communication.

Please refer to Appendix 14 for our e-procurement policy.

Effective Governance and Democratic Accountability

We will establish strong and effective governance arrangements. The relevant Committee will play a key role in implementing, developing and monitoring the Corporate Procurement Strategy and all related policies.

We will regularly report on progress and evaluate the effectiveness of this Strategy. This will contribute to continual improvement in all aspects of our procurement practices.

Our policies on communication and engagement with all stakeholders (service users, customers, communities, trade unions, staff and suppliers) will contribute to the transparency and accountability of the procurement process. These policies are attached

Standards and Controls

We will ensure that all of our procurements comply with legal requirements and regulations. Our procurement practices must also meet the Council’s corporate values and high standards of ethics and good stewardship. Some of the key standards and controls, which are relevant to procurement, are summarised below.

Procurement law and the regulatory framework

Procurement is governed by a number of legislative and regulatory sources. Please refer to **Appendix 3** for a list of currently applicable legislation.

Financial regulations

The Council is governed by Financial Regulations. Financial Regulation 8 governs ‘Procurement and Contracts’. This regulation has recently been updated, together with the accompanying Corporate Procurement Process.

A summary of Financial Regulation 8 is attached at Appendix 4 together with two key diagrams providing guidance on the process, financial thresholds and documentation requirements. A full copy of the Financial Regulations is available on request.

Whistleblowing

We are committed to the highest possible standards of openness, probity and accountability. We encourage and expect employees and other people we deal with who have concerns about any aspect of our work to come forward.

Our Whistleblowing Policy has been put in place to encourage the raising of concerns without fear of victimisation, subsequent discrimination or disadvantage.

The policy applies to all employees and those contractors working for us, for example agency staff, builders and drivers. It also covers suppliers and those providing service under a contract with us in their own premises, for example homes.

The Whistleblowing Policy is reflected where appropriate in our Procurement documentation.

Health and Safety

We are committed to providing a safe and healthy work place and work environment for all of our employees, contractors and suppliers. This commitment forms part of our corporate health and safety policies but we will also consider health and safety issues when qualifying contractors and suppliers with whom we may do business. Relevant health and safety issues will form part of the contract documentation.

Risk Management

We are committed to a risk management based approach to all aspects of the procurement of goods, works and services.

One aspect of risk management is evaluating and determining the capabilities of suppliers and contractors with whom we may do business. We will achieve this by:

Building pre-qualification into the procurement process for contracts in accordance with our Financial Regulations; and

Pre-qualifying all contractors and suppliers with whom we have framework arrangements or who form part of any standing list we may operate.

Monitoring performance/key outcomes of contractors

Risk management is built into our procurement processes from Options Appraisal through to procurement and contract management. Please refer to Appendix 15 for further details of our risk management approach.

Performance Management

We will establish and develop a culture of performance management. This will incorporate mechanisms for monitoring and reporting progress, and a drive for continuous improvement.

Evaluation of the options appraisal and procurement processes is important to draw on the lessons learnt and to feed these into future appraisal and procurement best practice. Performance management will include:

- Regular reporting to the relevant Directors/senior managers and the relevant Committee during the appraisal and procurement processes.

-
- A “challenge” evaluation of each options appraisal and procurement process will be carried out jointly and the findings will be shared. Staff or their representatives will be consulted during the evaluation process where appropriate.

Evaluation findings will be reported to the Corporate JNCC so that the Council trade unions have the opportunity of making a corporate response to best practice.

Performance Indicators as a driver for procurements.

All contracts and Service Improvement Plans will be subject to the Council performance management and monitoring regimes.

Performance standards will be built into all contracts as appropriate. Failing contracts will be identified as early as possible and a range of actions will be considered. The policy in relation to failing contracts can be found in Section

Quality assurance will be carried out through the Gateway Review Process. The Office of Government and Commerce (OGC) developed the Gateway Process for Government Departments to provide a method of ‘managing’ a project at critical stages in its lifecycle to provide assurance (with supporting evidence) that the project can proceed to the next stage.

Training and Development

We will take a structured and co-ordinated approach to education, training and development for all officers with procurement responsibilities across the Council.

Relevant policies, toolkits and guidelines will be easily accessible for all members of staff. This information will be maintained and updated as necessary.

Sustainability (social, economic and environmental)

We are committed to sustainable procurement by ensuring that social, economic and environmental issues are considered during all stages of a procurement process and as part of the whole life cost of a contract. We will achieve this by ensuring that sustainability considerations are embedded within our procurement processes and by promoting good practices with those with whom we do business.

We are committed to improving community well-being, in both the local and regional economies by encouraging local purchasing of goods and services, increasing opportunities for black and minority ethnic enterprises and creating local employment and training opportunities.

We are committed to ensuring that our procurement activities and those of our suppliers do not have a detrimental effect on the environment and have a positive influence on whether the Council achieves its sustainable and environmental aims. We will reduce the negative effect on the environment of the products and services that we buy, by considering the effect of our decisions and by working with suppliers where appropriate, to ensure they have a similar commitment.

Equality and Diversity

We strongly support equal opportunity, equal access and positive outcomes for all sections of the community when procuring goods, works and services. We aim to ensure that organisations that provide these on our behalf comply with equality legislation and promote equality of opportunity.

We will achieve this by considering that equality issues and benefits are factored early into the planning process for all procurements.

Fair Trade

Products from developing countries are often sold at prices that do not afford their producers a decent standard of living. 'Fair Trade' aims to alleviate poverty and "humanises" the trade process by making the producer-consumer chain as short as possible so that consumers become aware of the culture, identity and conditions in which producers live. The Council will in its procurement process will take into account Fair Trade.

Fair Employment

A skilled and competitive workforce is a vital component of the Council's ability to respond to the rapidly changing public sector environment. We value our staff and give training and development a high priority within Service Improvement Plans.

We recognise that Service Reviews and Major Project procurements may result in a change in the way services are supplied – for example, a private public partnership or a form of outsourcing. This could result in staff transferring to another employer (in line with Government policy). We will seek to minimise the negative impact of the procurement process by proper and systematic consultation. This should also minimise unexpected decisions. We will consider applying all aspects of the Government's Code of Practice on Workforce Matters in Local Authority Service Contracts subject to the possible effect on value for money, core objectives or service procurement. Our commitments relating to fair employment are set out in **Appendix 16**.

Focus on Service Needs

It is important that the needs of service users are fully analysed and considered during any procurement process. This analysis must take account of the current level of met and unmet needs and how this may change in the future.

The needs of socially excluded groups and equality groups (gender, race, disability, religion, marital status, age, sexual orientation, with/without dependants, political belief) must be fully documented and taken into account.

Community and Customer Engagement

We are committed to listening and talking to our communities and customers about what they want. Our values and overall strategy are set out in the Council's Engagement Strategy. The views of customer and community representatives should be sought as appropriate during procurements. This may take place through a Citizens Panel or other research.

Service users and community organisations will play a key role in options appraisals in connection with key services and regeneration projects where their involvement is an essential part of the public policy making process.

Service users, community organisations and trade union representatives will be consulted if any 'deconstruction' of a service is under examination for outsourcing or market testing purposes in order to assess the detailed implications. Our policies in relation to stakeholder engagement are set out in **Appendix 18**.

Regeneration

The contribution to service provision made by small and medium-sized enterprises (SMEs), social enterprises (SEs), voluntary and community-sector suppliers, black minority ethnic groups (BMEs) is highly valued by the Council. We are committed to working with a diverse range of suppliers to ensure that they are given every opportunity to understand the Council's requirements and gear themselves up for procurement opportunities.

The Council is committed to improving community well-being both in the local and regional economies by encouraging local purchasing of goods and services and creating local employment and training opportunities. This supports our Regeneration Strategy.

Community benefit requirements can be included in contracts that are below EU Public Procurement Thresholds and can be a factor in the selection and award of the contract provided that non-local contractors are not disadvantaged and these contracts comply with the Government's procurement policy.

Where procurements are above the EU Public Procurement Thresholds, community benefits can be included and can be used in the selection and award procedures provided that each of the following tests are met:

- they are related to the subject of the contract;
- they are mentioned in contract notices;
- they do not disadvantage non-local contractors;
- they are supported by the powers and policies of the Council; and
- they provide a 'measurable benefit' to the Council.

Constructive Partnerships

We recognise the importance of joint working through partnerships as a way of delivering:

- more efficient ways of working;
- more cost effective ways of working; and/or
- new and better models of delivery.

A number of partnerships already exist within the Council. We are committed to challenging and improving these whilst also exploring new opportunities with other local authorities and public sector bodies, private and voluntary sector organisations and with central government.

Procurement Policy

All Councils have a duty to provide "Value for Money". We must continually improve our services in terms of quality, effectiveness and efficiency.

This policy sets out the approach that we take to achieving "Value for Money" across our services. This may be through indirect competition (benchmarking) or direct competition (a procurement exercise). It sets out the conditions under which the Council is committed to using in-house services and works.

Procurement Service Review Programme

The Procurement Service Review Programme potentially encompasses all services. The Programme is prioritised on the basis of Medium Term Plan priorities, performance indicators, budget and risk analysis.

The first step in the process is to analyse future service needs and performance. If these are satisfactory, then no further action is taken until the next review. If there are weaknesses, there are three potential outcomes:

- retention of current service provider supported by a Service Improvement Plan;
- procurement exercise with a supported in-house option; or
- procurement exercise without a supported in-house option.

Corporate Procurement Process

This process sets out all the steps to be undertaken in a procurement from preparing a business case through preparation of procurement documentation, advertisement of procurement, tender process to contract finalisation and contract monitoring.

This process sets out when the “Competitive Dialogue” procedure applies and explains when Framework Arrangements are appropriate. It outlines the process to be followed in relation to an In-House Option including the establishment of Ethics Walls. It also contains a flowchart outlining the Corporate Contract Management process and a practical guide for officers.

Options Appraisal Toolkit

Please refer to **Appendix 9** for further details of the toolkit.

Options Appraisal is the stage of the procurement process that requires the most detailed work and innovative thought about the provision of the service.

The Options Appraisal Toolkit helps to inform this process by providing guidance on market research and how to identify potential options. It then sets out the methodology for appraising the different options in order to make a recommendation.

Framework Agreement Guidance

Please refer to **Appendix 10** for the full guidance note.

This guidance note explains what a Framework Agreement is and how it is used. It provides guidance on the establishment on a Framework Agreement, awarding call offs and the management and monitoring of Framework Agreements.

Establishing Ethics Walls

If a procurement exercise involves a bid from an internal part of the Council (in competition with external bidders), ethics walls need to be considered and set up at an early stage of planning. This guidance note explains why ethics walls are necessary and how they should be established and documented.

Setting Evaluation Criteria

This guidance note assists in setting the evaluation criteria to be used in assessing bids. It gives examples of criteria and explains the use of evaluation matrices and clarification questions.

Soft Market Testing

This guidance note defines “soft” market testing and explains how it should be undertaken. It provides guidance on how to engage the market and sets out guiding principles.

E-Procurement Policy

This policy sets out our commitment to e-procurement. It provides details of the internal market place, e-tendering, e-ordering, purchase cards and e-auctions.

Major Projects

Our definition of a Major Project is set out below. All Major Projects will follow the Corporate Procurement Process. A major project is a non-routine project, either capital or revenue funded, which:

- Delivers both assets and services or has the potential to result in Council services being delivered by other organisations. This does not include routine construction or highways projects that are simply high value but with no other unusual features.

AND

- Has a life cycle (period from project approval to contract completion) in excess of say 1 year, and/or
- Will result in a contractual commitment longer than say 2 years, and/or Is of a value that exceeds European Union Procurement Directive limits, and/or
- Involves a multi-disciplinary approach across the Council and delivery will require significant time, effort and resources

OR

- Includes sensitive dependencies, and/or
- is identified for monitoring via a risk assessment, and/or
- is defined as such by relevant Committee (to accommodate shorter-term politically sensitive projects of relatively low financial value).

For example, major projects will include:

- All Private Finance Initiatives/Public Private Partnerships
- All projects undertaken in partnership with other organisations or in association with external bodies having a right of monitoring or approval over the project
- All significant regeneration/redevelopment projects

Key Point: If in doubt as to whether a project is covered by this definition, guidance should be sought from the relevant Directors/senior managers.

Failing Contracts

This policy sets out the actions to be taken in the event of a provider failing to deliver to the agreed contract performance standards.

Where following the letting of any contract, or implementation of a Service Improvement Plan, providers fail to achieve the agreed performance standards on a consistent basis then the following may be considered:

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- Additional and/or more intensive monitoring arrangements;
 - Meetings with the provider to discuss the scope and cause of problems;
 - Additional technical support to the provider, financed by the provider;
 - Issue of warning notices when triggered by level of defaults;
 - Process of contract termination and selection of alternative provider.
 - Conditions and a procedure will be established for the removal of a service provider/contractor from any approved list as a consequence of poor performance.

The Council acknowledges the right of service users, community organisations and staff and/or their representatives to make representations about the removal of failing or poorly performing service providers or contractors. Every service provider contract or Service Improvement Plan will include details of the Council's Authorised Representative whose role is to monitor the service provider and is subject to the Council performance management and monitoring regimes. This officer is the first contact for any form of representation. Appropriate action will be taken by the Council under the terms of the contract or Service Improvement Plan.

Risk management process

Please refer to **Appendix 15** for further details of our approach to risk management. This process sets out how risk management is built into our procurement processes from Options Appraisal through to procurement and contract management. It explains the relationship between risk management and procurement. A risk matrix is provided to identify the main risks at all stages of the procurement process.

Gateway Review Process

Information about the Gateway Review Process is set out below.

The Office of Government and Commerce (OGC) developed the Gateway Process for Government Departments to provide a method of 'managing' a project at critical stages in its lifecycle to provide assurance (with supporting evidence) that the project can proceed to the next stage.

How it Operates

Within the process are review/hold points known as Gates. These allow an independent assessment of the progress and robustness of the project, measured against the required outcomes. The process ensures control of expenditure and assists with resource planning, financial planning and financial forecasting. It allows for identification and management of risk during the life of a project.

Gateway is designed for projects that procure services, construction, property, IT-enabled business changing projects and procurements utilising framework contracts.

What it Does

The Gateway process assists in the achievement of the strategy for project delivery by ensuring that:

- All relevant stakeholders fully understand the project status and issues involved.
- The best available skills and experience are deployed on the project.

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- The project is 'on target' with regard to cost, risk management and programme dependencies.

Gateway and Local Government

The 4Ps have developed a Gateway Review Process for local government and are rolling out the process as an aid to local authorities. Local authorities will achieve project assurance through this process. We have initiated the 4Ps Gateway Reviews for our Major Projects and will continue to do so.

Our Gateway Process

We have embraced the 4Ps principles for Gateway reviews and have also developed our own model which retains the overall principle of the OGC/Local Partnerships processes but provides a 'fit for purpose' solution which focuses on the areas and issues of contract review/management which align with the Corporate Procurement Strategy. This Internal Gateway process is called the Project Assurance Review Process (PARP).

Use of Consultants

We will ensure that external consultants will only be used when necessary when in-house expertise or capacity is not available, where external advice is required to assist with project delivery and where value for money can be demonstrated. Contracts should include a responsibility for knowledge transfer to the Council.

All external consultants must be procured in compliance with procurement legislation and the Financial Regulations. Consideration should be given to setting up framework and/or partnership arrangements for procuring consultancy advice where this would offer improved value for money and/or added value.

The performance of External Consultants must be monitored to ensure that their performance meets the requirements of the brief, their costs are managed and that value for money is obtained.

Fair Employment Commitment

Some Major Project procurements may result in a change in the way services are supplied – for example, a private public partnership or a form of outsourcing. This could result in staff transferring to another employer (in line with government policy).

This policy sets out the ways in which we will seek to minimise the negative impact at all stages of the procurement process by proper and systematic consultation. It explains how we will consider applying all aspects of the government's Code of Practice on Workforce Matters in Local Authority Service Contracts (subject to the possible effect on value for money, core objectives or service procurement).

Fair Employment – Staff Engagement

This policy is closely related to the Fair Employment Policy. It provides further detail of how we will engage with staff and trade union representatives during procurement activities. The policy sets out key principles for engagement and explains how engagement will take place at different stages of the procurement process including documentation, bidder discussions and evaluation.

The policy also includes specific guidance in relation to engagement with staff and trade union representatives during options appraisal and in-house bids.

User and Community Engagement

This policy explains our principles for community participation. It sets out how we will involve service users and community representatives at all stages of the procurement

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Appendix 1

Strategic Planning Framework

To be written to align with the Council's new arrangements.

Appendix 2

Governance Arrangements

To be written to align with the Council's new arrangements.

Appendix 3

Procurement Law and the Regulatory Framework

Procurement Law

Procurement is governed by a number of legislative and regulatory sources. The relevant Committee shall through Director of Corporate Governance seek confirmation of the appropriate legislation and legislative process prior to any decision pursuant to this Strategy.

The following are current applicable legislative sources:

European Commission 2004 Procurement Directive – implemented into UK legislation by the Public Contracts Regulations 2006.

Government Procurement Agreement of the World Trade Organisation;

Local Government Act 1972;

Local Government (Contracts) Act 1997 (power to obtain goods, services and works);

Local Government Act 2000 (power to promote well-being);

Local Government Best Value (Exclusion of Non-Commercial Considerations) Order (Statutory Instrument 909/2001);

DETR Circular 10/99.

The Local Government Act 2000 (Constitutions) (England) Direction 2000.

Equalities

- The general duty to promote racial equality: Guidance for public authorities on their obligations under the Race Relations (Amendment) Act 2000
- Human Rights legislation
- Disability Discrimination Act 1995
- Best Value
- Comprehensive Performance Assessment

Fair Trading covering a wide area of consumer protection law, the main areas covered are:

- safety

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- pricing
 - weights and measures
 - descriptions of products and services
 - the contract between a buyer and seller
 - competition between businesses

The primary purpose of this type of legislation is to ensure 'truthfulness of trade' thus preventing consumers being misled during contractual negotiations for goods and services.

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Appendix 4

Financial Regulations

Financial Regulation 8 – Procurement and Contracts (November 2006)

8.1 The Procurement Procedure Rules which are appended to these Financial Regulations (as Appendix 1) shall apply and be followed whenever the Council wishes to arrange for:

- (a) the purchase of goods, materials and related services (that is, services which are integral to the provision of those goods or materials, such as installation, servicing, maintenance etc);
- (b) the execution of works; or
- (c) the provision of other services (including consultancy).

8.2 The Procurement Procedure Rules are part of this Financial Regulation 8 and failure to comply with them shall amount to a breach of financial regulations.

8.3 Subject to the specific provisions of the Procurement Procedure Rules, Council officers shall in undertaking any procurement of goods, materials, works or services always have regard to and seek to implement the following general principles:

- (a) the need to ensure the Council and its citizens obtain good value for money and are properly protected as consumers of the goods, works or services;
- (b) the need to ensure and demonstrate true and fair competition, without unlawful discrimination;
- (c) the need to ensure the procurement process is transparent and accountable and susceptible to full audit;
- (d) the need to ensure the elimination of any opportunities for fraud or corruption.

Guidance on Financial Thresholds and Documentation / Audit Requirements

Total Value	Procurement Route	Documentation Requirements	Evidence for Audit Purposes
Up to £5,000	SEEK AT LEAST THREE QUOTATIONS UNLESS INAPPROPRIATE - see PPR 1.4 A Delegated Officer must be satisfied good value for money is obtained	The successful quotation if oral must be confirmed in writing. All payments must be made and all Orders processed via the POP system.	Officers must keep a written record of all quotations received and of the reasons if less than 3 have been sought.
£5,000 to £20,000	OBTAIN AT LEAST THREE MINOR QUOTATIONS – follow PPR 3.10 to 3.12. Quotations may be obtained orally, although officers may decide to seek three Written Quotations (if, for example, there is a detailed specification for the Contract).	The selected Minor Quotation, if submitted orally, must be confirmed in writing. The successful firm must pass a risk assessment unless exempted under PPR 2.6. An Order (attaching standard Terms and Conditions) may be placed with the successful firm. All payments must be made and Orders processed via the POP system.	Officers must: 1. keep a detailed written record of all Minor Quotations received orally and of the reasons for selecting the successful firm; and 2. retain evidence of placing the Order and a copy of the Terms and Conditions.

<p>£5,000 to £20,000 (if not Minor Quotations) or £20,000 to £139,983 (if not Tenders)</p>	<p>SEEK AT LEAST THREE WRITTEN QUOTATIONS – follow PPR 3.13 to 3.16. Quotations must be sought by written means and submitted by a certain date. Quotations must be invited by, and returned to, Corporate Procurement Team, unless agreed otherwise by Assistant General Manager (Procurement)</p>	<p>The complete list of documentation required to undertake the procurement is stated at PPR 3.15 which must be checked and dispatched by the AGM (Procurement) unless he agrees otherwise. The successful firm must pass the risk assessment requirements unless exempt under PPR 2.6. An Order (attaching the standard Terms and Conditions) may be placed with the successful firm, otherwise a <i>Formal Contract</i> is needed, before the firm commences work. All Orders must be processed and payments made through the POP system. A Completion Statement must be sent to the AGM (Procurement).</p>	<p>Officers must:</p> <ol style="list-style-type: none"> 1. keep a written record of the evaluation criteria (unless awarded on price only) and the scores each firm received in relation to such criteria as well as keep a detailed written record of the reasons for selecting the successful firm; 2. retain a copy of the <i>Formal Contract</i> or evidence of placing the Order and a copy of the Terms and Conditions; and 3. retain a completed Summary of Quotations/Tenders Received Form
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Total Value	Procurement Route	Documentation Requirements	Evidence for Audit Purposes
<p>£20,000 to £139,983 (optional) or £139,983 and above (essential)</p>	<p>SEEK A MINIMUM OF FOUR TENDERS** – follow PPR 3.17 to 3.20. Tenders must be sought by means of issuing an Invitation to Tender. Quotations must be invited by, and returned to, the <i>Assistant General Manager (Procurement)</i>, unless agreed otherwise by Assistant General Manager (Procurement) ** A minimum of five tenders is needed if the EU Rules apply and the Restricted Procedure is being followed.</p>	<p>The complete list of documentation required to undertake the procurement is stated at PPR 3.19 which must be checked and dispatched by the AGM (Procurement) unless he agrees otherwise. Officers must seek approval from the Director of Corporate Governance Procurement Team if the EU Rules apply. The successful firm must pass the risk assessment requirements unless exempt under PPR 2.6. There must be a <i>Formal Contract</i> in place before the firm commences work. All Orders must be processed and payments made through the POP system. A Completion Statement must be sent to the AGM (Procurement).</p>	<p>Officers must:</p> <ol style="list-style-type: none"> 1. carry out and evidence a scoring exercise which assesses the firms' Tenders against the evaluation criteria (unless awarded on price alone) and keep a detailed written record of the reasons for selecting the successful firm for at least three months; 2. retain a copy of the Contract; and 3. retain a completed Summary of Quotations/Tenders Received Form;
<p>Any Value over £5,000</p>	<p>NEGOTIATION WITH ONE FIRM – follow PPR 3.21 to 3.27.</p>	<p>The firm must pass the risk assessment and there must be contractual terms in place before the firm commences work. Officers must first ensure that any negotiation with one firm complies with EU Rules (and seek legal advice to this end) and obtain an Authorisation to Negotiate. All payments must be made and all Orders processed via the POP system. A Completion Statement must be sent to the AGM (Procurement) if over £20,000.</p>	<p>Officers must:</p> <ol style="list-style-type: none"> 1. retain a copy of a completed Authorisation to Negotiate Form which has been signed by a Delegated Officer and evidence of all procedures complied with in accordance with PPR 3.21 to 3.27; and 2. retain a copy of the Contract.

Note: This is guidance only and officers must follow the Rules. If in doubt, officers should seek advice from Procurement Officers or the Director of Corporate Governance.

Appendix 5

Equality and Diversity

We are committed to ensuring that:

- All of our procurement practices support our Equality Policy and enable us to meet our duties under the Race Relations (Amendment) Act 2000
- All contracts we award are non discriminatory and promote equality of opportunity
- The contractors we work with are non discriminatory and share our commitment to promoting equality of opportunity
- We work with our partners and contractors to establish targets which we can monitor to assess their performance
- We provide advice, guidance and support to our contractors and potential contractors so that they can improve their performance and the performance of those they work with.

We are committed to achieving Level 5 of the Equality Standard for Local Government. The Equality Standard is a framework that will help us to remove barriers that create disadvantage and discrimination. The five levels of achievement are: Level 1 Commitment to a comprehensive Equality Policy Level 2 Assessment and consultation Level 3 Setting equality objectives and targets Level 4 Information systems and monitoring against equality targets Level 5 Achieving and reviewing outcomes

As part of this commitment we have undertaken a review of equality within our procurement activity. We have already made a number of changes to our procurement processes. These will ensure that there is a consistent approach to equality within all contracts and procurement activity across the Council:

- We include a standard equality clause in standard documentation on all major contracts for services and works. This requires contractors to comply with relevant equality legislation and codes of practice and to provide evidence that they are working to promote equality;
- We include a standard equality clause in the terms and conditions used for goods and related contracts;
- We ask equalities questions in all Council Pre Qualification Questionnaires. This enables the Council to assess the arrangements of potential contractors for ensuring they adopt fair employment practices which comply with relevant equalities legislation; and
- We include standard equality statements in tenders for Council contracts. These outline the Council's commitment to equality of opportunity and its expectations of tenderers.

Appendix 6

Procurement Policy

1. Overview

All Councils have a duty to provide “Value for Money”. We must continually improve our services in terms of quality, effectiveness and efficiency.

This policy sets out the approach that we take to achieving ‘Value for Money’ across our services. This may be through indirect competition (benchmarking) or direct competition (a procurement exercise). It sets out the conditions under which the Council is committed to using in-house services and works.

2. Overall Policy

We will employ the following approaches to achieve both “Value for Money” and continual improvement in the quality, standards and delivery of Council Services and strategic project planning, development, implementation and monitoring:

A. Through Indirect Competition (Benchmarking)

We will assess the competitiveness of different functions by reference to other bodies including benchmarking acknowledged ‘best practice’ and beacon authorities and private and voluntary sector providers. Where services are provided in-house, and the difference between their performance and national best practice is such that best practice can be achieved within a reasonable timescale, the services will, with support and encouragement, develop a Service Improvement Plan (SIP) to achieve equivalent levels of performance, or better.

B. Through Direct Competition (Procurement Exercise)

Where a SIP is not appropriate or where a service has developed a SIP but this has not been implemented so as to achieve the required standards of performance and service delivery, we will, having regard to current performance and suitability, undertake a procurement exercise seeking the best possible service provision. Such a procurement exercise may or may not involve an in-house bid. Contracts will be awarded to the provider offering the most economically advantageous balance of quality and cost within the context of the Council’s policy objectives.

3. Key objectives

The key objectives of ‘Value for Money’ Procurement, subject to legal and regulatory constraints, are divided into strategic outcomes and best practice procurement objectives:

A. Strategic Outcomes:

- The fundamental commitment to deliver the best and most appropriate services possible for residents and users;
- Ensuring that procurement and project planning reflects our core values and corporate aims and policy objectives, in particular to make Barnet sustainable and prosperous by addressing equality, community involvement, housing, education and skills, employment and the economy, crime and community safety, arts and culture, health and social care, the environment and transport,

as reflected in and measured by Executive portfolio plans and balanced scorecards.

- Achieving clearly specified outcomes for each service which directly relate to the quality and responsiveness of the service;
- Generating the most economically and socially advantageous balance of quality and whole-life cost;
- Taking full account of the need for economic and social sustainable development in the whole-life evaluation of proposals;
- Taking full account of local circumstances and priorities;
- Maximising opportunities to reduce inequalities and increase social inclusion;
- Furthering our commitment to fair employment;
- Maximising community well-being and sustainability;
- Maximising local labour and social and economic provisions;
- Supporting regional policies to maximise the benefits of local sourcing of goods and services;
- Ensuring participation of service users, the community, staff and their representatives in the procurement process; and
- Underpinning our Corporate Procurement Strategy.

Best Practice Procurement Objectives:

- To achieve clear ownership by members and senior officers;
- To be an explicit responsibility of the relevant Committee;
- To achieve the 4Cs of challenge, compare, compete and consult;
- To be timely;
- To minimise the burden on administrative and monitoring resources;
- To avoid over-complicating simple or routine transactions;
- Explore all appropriate forms of procurement and partnering arrangements;
- To encourage the continuing participation of high quality partners and tenderers;
- To encourage and develop local awareness and ability to participate in our procurement and partnering opportunities; and
- To be transparent and democratically accountable.

4. Requirements

All services, whether provided by existing or potential providers, are required to demonstrate (subject to legal and regulatory constraints):

- Commitment to meeting the needs and addressing the aspirations of users of the services and to other stakeholders;

-
- Value for money and operational efficiency as evidenced by national performance indicators where available or by other means of benchmarking;
 - Compliance with stated service aims and objectives, and evidence of an organisational culture that will accommodate the implicit public service objectives of the service in question;
 - A detailed service delivery plan;
 - Commitment to continuous improvement, innovation and best practice public policy;
 - Commitment to valuing the staff of the service and to encouraging a motivating environment;
 - Commitment to quality and equality, both within the employment practices of the organisation itself and in the delivery of the service; this must include the Council's obligations under the Race Relations Amendment Act 2000 and Disability Discrimination Act 1995;
 - Effective management, systems and procedures;
 - Flexible working arrangements to meet user requirements;
 - Commitment to the Charter for the Environment, 'Local Action 21' and the principles of EMAS; and
 - Commitment to the Council's policy objectives.

There may be some instances where the average size or nature of an external provider may make some of these provisions unreasonable. In that case, the procurement in question will assess the level of compliance that can reasonably be required.

All procurement decisions will be informed by:

- Specifying in advance the service required;
- an understanding of the market in question;
- a risk analysis of the various options.

We will actively seek to procure services from a source that best meets our objectives, and when applying this Strategy will consider the possible implications of the following:

- The level of financial investment that will be made for the benefit of the people of Barnet;
- Economies of scale available that can be obtained by means such as regional collaboration;
- The service provider making best use of the resources applied to the service and can deliver continuous service improvement;
- The level of specialist expertise that will be made available for the benefit of the people of Barnet; and
- The volume and predictability of demand.

-
- Cabinet/Executive members with the appropriate portfolio and relevant Committee members will be directly involved in the process;
 - Consultation with all user representatives in the community, staff and/or their representatives together with appropriate participation in the process;
 - Application of the Performance Management Strategy;
 - availability of full and detailed cost information;
 - innovation;
 - Protection (so far as the law will allow) of social values and the Council's policy objectives;
 - the framework for equalities will be strengthened; and probity, accountability, transparency and fair competition;

The following will be considered essential elements of the competitive process irrespective of whether indirect or direct:

5. In House Services and Works

5.1 Services

Where services (e.g. legal, financial consultancy, technical/design), are provided in house, and where services of that type are required for a particular project or purpose, then provided that:

- (a) there is capacity to provide those services in-house;
- (b) there is the capability/competence to provide those services in-house; and
- (c) there is no other project specific reason why those services should be provided externally,

we are committed to providing those services from in-house resources.

It is the responsibility of all officers to follow the current policy outlined above. Where issues arise regarding the perceived capacity, capability or competence of an in-house provider these should be discussed by the relevant heads of service and an agreed way forward should be reached.

Where agreement on a way forward cannot be reached the issue shall be referred for a decision to the Deputy Chief Executive via the Assistant General Manager (Procurement).

5.2 Works

Where there is a requirement for works to be provided, the Director of Technical services should be consulted to determine whether it can be undertaken under one of our existing contract arrangements or whether the works need to be procured under an alternative arrangement. A corporate process will be followed in all instances when procuring works, which includes the following key principles:

- Technical Services should be engaged when a need for works has been identified. This should be prior to the preparation of tender documentation;
- Technical Services should advise on the project proposals (brief, design etc) and the procurement route to be followed;

-
- Any in house provider should be invited to negotiate for all works with a value under £100k. In discussions with the client directorate, it is for Technical Services to determine the suitability (capacity, experience, cost) of the in-house provider to undertake works proposed;
 - Any works valued over £100k shall be procured in the usual way under Procurement Procedure Rules. If Technical Services considers that the in-house provider has suitable capacity and expertise to carry out the works, the in-house provider will be invited to submit a tender or quotation as part of that procurement process provided the in-house provider confirms their interest in doing so. Appropriate 'Ethics Wall' arrangements would need to be put in place; and
 - Senior procurement officers must approve tender documentation prior to despatch, and tenders must be returned to him/her unless otherwise agreed.

5.3 Subcontracting to In House Services

So far as the law will allow, the Council is committed to the consideration of the potential for sub-contracting support services to well performing in-house services, for example, in PPP/PFI projects, trusts, arms length companies and partnerships.

Appendix 7

Procurement Service Review Programme

Overview

The Procurement Service Review Programme encompasses those services, which are not expected to undergo Service Review in the near future. The Programme is prioritised on the basis of corporate strategic plan priorities, performance indicators, budget and risk analysis.

The first step in the process is to analyse future service needs and performance. If these are satisfactory, then no further action is taken until the next review. If there are weaknesses, there are three potential outcomes:

- retention of current service provider supported by a Service Improvement Plan;
- procurement exercise with a supported in-house option; or
- procurement exercise without a supported in-house option.

2. Procurement Service Review Programme – Introduction

The Procurement Strategy will be applied to services not expected to undergo Service Review in the near future, by way of a prioritised procurement programme informed by the corporate strategic planning process, performance indicators, budget and risk analysis. Many of its provisions are essentially the same as those contained in the procurement policies and guidance notes, where this is the case the two sections are appropriately cross-referenced.

There are three steps following adoption of this Strategy:

Step One – The Procurement Programme

Step Two – The Procurement Analysis

Step Three – Procurement Action

2.1 Step One – The Procurement Programme

The programme will be developed and Services prioritised with reference to the corporate challenge process of the corporate strategic planning framework together with performance, budget and risk analysis. Other than the corporate challenge analysis will initially be superficial to establish the programme but a more rigorous analysis will be undertaken in Step Two.

The Council will prioritise services which are priorities within the corporate strategic planning process and/or portfolio plans consistently exceed budget or there are known or foreseeable cost pressures and those services which under perform as shown by performance indicators (BVPI's etc) and/or those services that exceed their Risk Tolerance Threshold set pursuant to the Corporate Risk Management Process.

2.2 Step Two – The Procurement Analysis

The decision on both the source of and delivery of the service will be directly driven by the outcomes required of any service under review. There are three basic strands of analysis:

- Definition of future service needs,

-
- Performance, both financial and service delivery,
 - The views of service users and staff

Definition of future service needs

A 'blank sheet' approach to the services will be applied to fulfil the Council's objectives and users' needs in the future, before the existing current service and its performance are considered. This will include decisions on both service development and means of delivery

Methodology

All service procurement exercises are to clarify the requirements for the service and the best option or range of options for its delivery.

If the service definition exercise results in a model that does not correspond reasonably closely to any existing service, the process will move more directly to the options appraisal stage of procurement without taking comparative performance into account.

Future service needs will be informed by a full understanding of the Council's aims and external environment, based on the following strands of analysis:

- Should the Council be providing this service?
- What are the current and future needs of local service users?
- What are the views of service users?
- How do other authorities and providers meet those needs?
- What is the purpose of the service?
- How could the service contribute fully to the Council's strategic aims?
- What is the track record of other forms of service provision?
- What would be the added value to equalities, diversity and community wellbeing?
- How does the option improve environmental sustainability?
- Is there capacity and cultural ability to provide an in-house solution?

The Strategy requires an open and challenging approach at this stage to ensure that subsequent stages of the procurement process remain stretching and focused on improvement there is a challenge to the organisation's cultural assumptions about competition and service design

- account is taken of outcomes which are of genuinely strategic importance to the Council
- the procurement will be consistent with the Council's policies and broader aims and objectives
- the service definition is not to be prescriptive about how the outcomes will be achieved

N.B. On defining future service needs including delivery the existing service will be compared to the future needs and when a service does not appear to have the

expertise, culture or capacity to:
meet future needs or be capable of developing a service improvement plan or, where either:

- a service improvement plan fails to be implemented or
- falls short of user expected service delivery or
- fails to achieve targeted performance indicators then a procurement exercise will be undertaken.

Performance

Financial Performance

Service areas which:

- consistently exceed budgetary targets, or
- are subject to known or foreseeable cost pressures will be subjected to a risk analysis and the Council will explore the transfer or mitigation of the associated risk, through a procurement exercise to ensure proper and targeted use of Council resources.

Risk assessment will consider both the overall materiality of the service as well as the scale of its internal financial performance.

Service Delivery Performance

BVPs, CPA targets, LPSA targets and local indicators (including public satisfaction surveys) shall be applied to enable an objective view of service performance from several perspectives. It may be necessary to adopt a more proactive and concerted effort to develop local indicators where national measures do not exist or are inadequate or inappropriate.

N.B. Any service showing historic or consistent poor performance without any cultural capacity for change will undergo a procurement exercise without any option appraisal.

C. The views of service users and staff

The views of user/community representatives and staff (including their representatives) are a valuable aspect of options appraisal and procurement processes. Consultation shall focus on:

- the current service and possible improvements;
- possible options and their implications;
- market analysis information;
- possibilities for any 'deconstruction' of the service or market-making proposals.

Step Three - Procurement Action

This section sets out the action following either Corporate Challenge Analysis or a Procurement Analysis

Where analysis determines that the current service provision meets performance standards and service needs with provisions for improvement no further action will be taken until the next review of the service.

Where analysis reveals any performance or service delivery weaknesses or lack of provision for improvement action will be taken. The action falls into three categories:

- Retention of current service provider supported by a Service Improvement Plan (“SIP”)
- Procurement exercise with a supported in-house option/bid
- Procurement exercise without a supported in-house option/bid

A. Retention of the current provider supported by a SIP

Where the analysis reveals non-substantive weaknesses but there is a culture and capacity for change and improvement capable of delivery of the future service needs then the current service will be retained.

Retention of the current service provider requires the preparation, with the support of the Council and within an agreed time scale, of a three-year SIP. The SIP will require the approval of the relevant Committee.

The SIPs will specify the action required over a 3-year period to implement improvements, address any current weaknesses and increase the performance of the service. The Plan should include a timetable for each component of the plan, officer responsibility, resources required and any financial savings.

Action required:

- preparation of a three-year SIP;
- consultation with relevant Directors and senior managers.
- approval of the SIP by relevant Committee

B. Procurement exercise with a supported in-house option/bid

Where analysis reveals:

There are significant performance or delivery weaknesses but there is clear evidence of a culture for change and improvement or

The future service needs are different from the current service but again there is clear evidence of a culture for change and improvement an Option Appraisal will be undertaken followed by a procurement exercise. If analysis of the Option Appraisal provides an indication that an in-house option is viable then the procurement exercise will include a supported in-house bid.

Action required:

- assess definition of the service, financial and service delivery performance and views of users and staff;
- commence the options appraisal process.
- analysis of the option appraisal

approval of the inclusion of an in-house bid as part of the procurement exercise by the relevant Committee.

Procurement exercise no in-house option/bid

No existing in-house service provider will be supported in any bid process in a procurement exercise by the Council if:

-
- The service does not substantively meet performance standards or service needs
 - On defining future service needs the service provider does not have the expertise, culture or capacity to meet the future needs or
 - it does not have the expertise, culture or capacity capable of developing a SIP or,
 - it fails to implement a SIP or,
 - it fails, through its own action, to achieve improvement targets and timescales under a SIP or,
 - fails to gain approval of the relevant Committee to inclusion following an Option Appraisal exercise.

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Appendix 8

Corporate Procurement Process

Overview

This process sets out all the steps to be undertaken in procurement from preparing a business case through preparation of procurement documentation, advertisement of procurement, tender process to contract finalisation and contract monitoring.

This process sets out when the “Competitive Dialogue” procedure applies and explains when Framework Arrangements are appropriate. It outlines the process to be followed in relation to an In-House Option including the establishment of Ethics Walls.

It also contains a flowchart outlining the Corporate Contract Management process and a practical guide for officers.

2. Introduction to the Corporate Procurement Process

This Section of the Corporate Procurement Strategy covers the following:

- The Corporate Procurement Process
- Specialist Procurement
- How to prepare an In House Option / Bid
- Monitoring and Evaluation

There are a number of distinct elements to a procurement process each of which must be planned and managed under the Corporate Procurement Strategy and Council’s Financial Regulations:

- Preparation and agreement of the business case for the procurement;
- Risk management plan for the procurement in accordance with the Council’s Risk Management Framework;
- Preparation of the specification to be provided to the bidders (taking due account of sustainability, equality, health and safety, community safety and all other relevant factors);
- Preparation of procurement documentation including contract including contract award criteria;
- Advertisement of procurement, in OJEU if over the relevant European threshold, or in other publications if not;
- Submission of pre qualification questionnaire (if OJEU procedure) or contractor evaluation questionnaire (non OJEU procedure);
- Shortlisting of potential bidders by reference to questionnaire responses;
- Issue tender documentation to short listed bidders (including invitation to tender, specification, pricing, proforma and contract);
- Evaluation of bids received (using pre specified evaluation criteria and matrix);
- Clarification of bids received (post tender negotiation not being permitted);

Selection of winning tender;

- Alcatel letters to all bidders (if OJEU process)
- Contract finalisation – contract awarded and signed (if no challenge received during Alcatel period);
- Any necessary transition/mobilisation of contract (to be planned in advance);
- Post contract monitoring put in place;
- Evaluation of procurement process and lessons learned.

Note: since the introduction of the Public Contracts Regulations 2006, there has been a new ‘Competitive Dialogue’ procedure for complex projects such as PFI/PPP’s. Legal advice must be sought at the earliest stage of such projects. Following the introduction of this new procedure, access to the Negotiated Procedure (which involves an Invitation to Negotiate and extensive contract negotiation with a preferred bidder) is extremely limited, and this will only be used in exceptional circumstances, in accordance with the Regulations.

3. Principles for implementing sustainable procurement

Contract documentation should be based on the following principles:

- Fitness for purpose and value for money;
- Resource, energy and water efficiency;
- Whole life costs;
- Environmental sustainability;
- Equalities;
- Maximising community benefit through social considerations;
- Health and safety standards;
- Workforce Protection (TUPE/Corporate Employment Policies)
- Clear concise default procedures linked to termination
- Clear payment mechanisms

4. Framework Arrangements

In some circumstances, it is sensible to procure framework arrangements, either with one service provider or a panel of providers, for a particular service, supply or set of works.

These framework arrangements allow the Council to ‘call off’ its ongoing requirements for those services, suppliers or works, over a period of up to 4 years.

The (Public Contracts Regulations 2006) now allow us to advertise these Framework Agreements in OJEU. Legal advice should be sought from an early stage. See Appendix 10 for further guidance on Framework Agreements.

The Council currently operates a number of Framework Contracts with external suppliers which were established to ensure that additional capacity and expertise can be called upon quickly within the pre-determined terms and conditions of each contract including price and quality. All Frameworks have been subject to competition hence ensuring value for money throughout the life of the Framework.

The most fundamental benefit these arrangements bring is that the Council does not have to tender/negotiate each time it needs to procure something from the provider

involved in the agreement which saves both time and cost at the procurement stage. They also provide the opportunity for the Council to develop a working relationship over and above that of the traditional client/contractor.

Where it has been decided that services are not to be provided in-house then initial consideration should be given to a 'call off' from a framework contract. In consultation and discussion with the client directorate [and subject to the comments below], it is for the head of service responsible for the in-house service and the framework agreement to determine whether this is the most appropriate procurement route.

Where no relevant framework contract exists or in exceptional instances it may be considered more appropriate to procure additional resources by way of an alternative procurement route. In all instances, this should be agreed with the head of the in-house service and relevant Directors/senior managers. Where agreement cannot be reached the matter shall be referred to the Deputy Chief Executive for a decision.

In House Options and Bids

Introduction

The inclusion of an in-house bid in a service procurement exercise is dependent on the outcomes of the process set out in Appendices 6 and 7 (Procurement Policy and Procurement Service Review Programme) of this Strategy.

The policy in Appendix 17 deals with the involvement of the staff and their representatives in procurement involving an in-house option.

The objective is to ensure that in-house options and associated relationships are properly developed, managed and evaluated and that resources are used with maximum effect and efficiency.

Where there will be an in-house bid in a procurement process, clear Ethics Walls need to be set up and monitored, for the duration of the procurement process. See Procurement Guidance on Ethics Walls in Appendix 11.

Preparation of In-House Bids

The involvement of an in-house bid must be justified on competitive market grounds and the Council maximising value for money from the procurement process. This must be driven by the outcomes of the process set out in Appendices 6 and 7 of this Strategy and the Option Appraisal Process.

To compete the in-house service must:

- Demonstrate the ability to match or exceed the likely financial benefits and service improvements available from the external market, to the satisfaction of the relevant Committee. This must include an outline of proposed management arrangements both of the procurement process and of the ongoing service;
- Set out a rigorous SIP that will achieve upper quartile performance (or its reasonable equivalent) where national data is not available over the medium term; and
- Demonstrate measurable change following implementation of the SIP.

An outline proposal with these features, once accepted by CMT, will result in a relevant Committee Report recommending that a full "bid" be prepared for evaluation.

All In-house bids will be led by a Project Manager with a specific bid team which will include a consultative role for staff and their representatives in accordance with the policy set out in Appendix

Content of an In-House Bid

In-House bids must be good quality and comprehensive. The submission must address all the requirements of the Invitation to Tender.

Informing bidders of In-House Bid

The In-house bid, if it has been short listed, will be submitted as a “response” to the Invitation to Tender issued for the service, which will also state that an In-house bid is being submitted. The number of bids required for comparison at this stage is governed by procurement law and Financial Regulations of the Council and it is recommended that there should be at least three in all cases.

Evaluation stage where In-House Bid involved

All bids will be evaluated using the same process and criteria, including clarification meetings and presentations.

If the conclusion of the evaluation is that the in-house bid provides the best option for achievement of the Council’s objectives for the procurement in accordance with the evaluation criteria, it will be the preferred bidder and enter the final negotiation stage of the process.

Approval Process

As there is no direct contract with the In-house Service, the “contract” will be based on preparing a detailed, rigorous and time limited SIP. Unlike a contract, which requires Executive approval, the SIP will be presented to relevant Committee for approval.

The Relationship with External Bidders/Partners where an In House Bid will be submitted

There will be no formal relationship between the in-house bid team and external bidders.

The involvement of staff representatives in formulating the in-house bid as well as in their contact with external bidders or partners will be governed by the Protocol for Staff Involvement.

External organisations must be reassured as far as possible that the procurement continues to be conducted fairly and objectively. Guidance on Ethics Walls can be found at Appendix 11.

The in-house bid must be submitted simultaneously with external bids. No member of the in-house bid team will have access to any draft proposals that the bidders wish to discuss with the Council. This will be communicated to all potential bidders.

The in-house bid will be scrutinised to ensure that no material proposal is based on information not made available to external bidders.

Resource implications of In-House Bid development and preparation - Where an in-house bid is included in a procurement exercise it is pursuant to paragraph 6 of Part 1 of this strategy which states that the Council will support the bid. As part of the option appraisal, resources and implications in the service budget will be assessed and appropriate allowances made. As in any organisation if the bid costs rise to an extent

that the bid no longer represents a value for money option, the Council through the relevant Committee will decide whether or not to allow the in-house bid to proceed.

Information provision - Information will be made equally available to all bidders, internal or external.

The Contract Management Process – A Practical Guide for Officers

1. Justification and Impact Assessment

Once a procurement need has been identified there needs to be a justification and impact assessment that includes a range of considerations before continuing any further. These are included in a Pre-Procurement Checklist for Standard Procurements available from the Procurement officers.

The Checklist aims to assist staff when they wish to buy supplies, works or services and the arrangements they should consider when embarking on a procurement.

Importantly the Checklist now includes details of equality and sustainability impact assessments that are required to be undertaken. These should help you to establish whether you need to include specific equality or sustainability clauses or targets in the contract documentation and to what extent they should form part of post contract monitoring.

2. Draft Specification

A specification for a contract sets out what it is the Council expects from a contract and what the supplier or contractor is required to supply. Specifications are normally drafted by someone with technical understanding of what it is that is being procured.

3. Gateway 1

Gateway 1 is the point at which corporate advice is sought on how to proceed with procurement and a 'check' is undertaken on any documentation that has been produced. This is undertaken by Procurement officers. The extent of the 'check' is dependent on what is being procured, the method by which it is being procured and the detail and preparation undertaken by the service manager responsible for the procurement. In some instances the Director of Corporate Governance will be involved, particularly on larger works or service contracts or where specific equality or sustainability clauses or targets for example need to be included in contract documentation.

For example, a routine stationery order through POPS will require nothing more than authorisation as the companies the Council deals with have already been through a corporate pre qualification evaluation. The Council uses standard terms and conditions so there is little for the officer responsible for the procurement to do other than ensure he orders the correct goods and has a budget to pay for them.

However, a procurement of a consultant to undertake a short research project will require a more detailed check. The officer responsible for this procurement will be expected to have followed the Pre Procurement Checklist and have an audit trail in place.

The Gateway will lead to the production of a draft Invitation to Tender and Contract that will be sent out later in the process.

4. Pre Qualification

For non-POPS procurements potential contractors or suppliers must go through a pre qualification stage and complete a Pre Qualification Questionnaire (PQQ) for OJEU procurements or a Contractor Evaluation Questionnaire for non OJEU procurements. The PQQ/CEQ ask standard questions which can, if necessary, be supplemented with others if equality or sustainability issues for example are a technical aspect of what is being procured.

At the same time potential contractors are sent a copy of the Council's Equality Policy. Advice on issuing the PQQ/CEQ is available from the Procurement Gatekeeper.

5. Invitation to Tender

The Invitation to Tender (ITT) is sent out by the officer undertaking the procurement and outlines a description of what is being procured, a timetable and procedure for it and other details including the evaluation process and criteria.

At the same time a copy of the draft contract and specification should be sent to prospective contractors. Both the ITT and contract should contain any specific clauses and targets that are to be a core requirement of the contract.

6. Gateway 2

Gateway 2 is the stage at which tenders are returned and evaluated using agreed evaluation criteria. These should have been developed from the outset of the procurement and agreed by the evaluation team.

In most instances tender evaluations will be undertaken in directorates involving, where necessary, directorate equality and sustainability representatives, although the Gateway provides an opportunity for a corporate review and assessment.

The nature of the procurement will determine the complexity of the tender evaluation and so, for example, the evaluation of tenders for a 5 year major highway contract worth £25m is likely to be more complex than the evaluation of tenders for a small research project.

A corporate evaluation template together with advice and guidance on how to undertake an evaluation is available from the Procurement Gatekeeper.

7. Completion Statement and Post Contract Monitoring

Once a contract has been signed a standard completion statement needs to be completed and returned to the Procurement Gatekeeper. The statement contains a number of details relating to the contract e.g. contractor, start date, end date and value etc. This information is then fed into a corporate contracts register.

The completion statement also records any key targets or issues that are to be monitored during the term of the contract as part of the corporate post-contract management arrangements.

Post contract management will be undertaken by officers within directorates responsible for contracts. This will enable the Council to better understand procurement spend, identify opportunities for aggregation and framework agreements for example and proactively manage arrangements for letting future contracts.

Corporate contract management is supplementary to existing directorate arrangements around the management of contract performance for example and is not in any way a substitute for them.

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Appendix 9

Options Appraisal

1. Overview

Options Appraisal is the stage of the procurement process that requires the most detailed work and innovative thought about the provision of the service.

The Options Appraisal Toolkit helps to inform this process by providing guidance on market research and how to identify potential options. It then sets out the methodology for appraising the different options in order to make a recommendation.

2. Options Appraisal – Researching the Market

Having defined the service to be procured, the Council will look more carefully at what is available in the market. It may already have an idea of the sort of services that will deliver what is needed, but it needs to keep an open mind, as the specification may well change in the light of market analysis – particularly where the service is complex. This process may need to go through a number of iterations, as outputs are redefined to ensure the best fit between the Council's procurement goals and the possible ways of achieving them.

2.1 Market Research Methods

- Desk research, including trade publications and the internet;
- Market soundings following advertisement in trade publications or other contact with the market (letters or questionnaires);
- A Prior Information Notice published in OJEU;
- Consultation with other Local Authorities and Government Departments;
- Availability of benchmarking information;
- Focus group/workshop discussions with interested providers;
- Briefing day/market awareness event;
- Meetings with representatives of professional and/or trade associations;
- Research using Government supply frameworks eg. OGC's "Catalyst".

Care must be taken when carrying out any "soft market testing" or discussions with the market, about a potential service requirement/procurement. Guidance can be found at Appendix 13.

2.2 Scope of market research

Market research is used to develop an understanding of:

- the current market for the provision of services;
- anticipated future changes as a result of legislation, user demands and/or best practice;
- the organisation of the sector and the key providers;

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- the key developments and trends in the sector;
 - the pattern of mergers and take-overs;
 - whether the market or sector can contribute added value to the defined service; and
 - whether the market or sector is likely to be interested in providing the service.

2.3 Recording discussions

All discussions with potential providers are to be summarised and recorded as part of an audit trail. Contact with potential providers should be formal. Guidance can be found at Appendix 13.

2.4 Responsibility for market research

Market research should be carried out by Council officers, if necessary supplemented by specialist external advice, in order to build technical capacity and to control the process.

2.5 Action if limited response from other providers

2.5.1 Lack of Interest

If no substantive interest is expressed or if there is an absence of a market for all, or part of the defined service, consideration will be given to the possibility of “deconstructing” the totality of the service to assess the extent to which a market exists for some elements of the service.

An appraisal will be undertaken on any possible deconstruction with regard to costs, service integration and corporate policies. This will also include an appropriate consultation exercise.

2.5.2 Investigating new suppliers

The possibility of encouraging new supplier groups will be considered. This could include working with other local authorities, whether as partners in joint procurements or as direct suppliers. Potential partners may also include organisations that do not see themselves as operating in a market at all, such as voluntary or community groups. The cost, including officer time, should be taken into account in determining the extent to which this option is progressed.

Encouraging new supplier groups will be co-ordinated with economic development initiatives supporting the formation and growth of Small and Medium Enterprises (SMEs).

2.6 Guidelines for officers in investigating markets

The Market Testing Guidance (Appendix 13) contains guidance and obligations to ensure officers act with the utmost probity in researching and consulting with markets and in the options appraisal and procurement processes.

3. Identifying Potential Options

The following are possible outcomes of a market research:

- in-house provision;
- a mixed market;

-
- partnership – a public sector partnership or a public-private partnership;
 - full outsourcing/ externalisation/privatisation;
 - postponing the decision and undertaking a market test;
 - Hybrid combining two or more of the above;
 - Cessation of the service.

The option appraisal output will cover all of the variants that are relevant to the defined service being appraised.

The Options Appraisal Toolkit provides details to be considered on identifying options. The following are some key issues

3.1 In-house provision.

An in-house option can only be considered if it falls within Appendices 6 or 7 of this Strategy.

3.2 Mixed market.

The mixed market option could include the in-house provider provided it falls within Appendices 6 or 7 of this Strategy.

3.3 Partnership.

The Council acknowledges the importance of partnerships in delivering 'Value for Money' – partnership with the private and voluntary sectors, partnership with other public bodies acting locally, and partnership with central government itself.

Partners may include:

- Other local authorities, central government and statutory organisations
- a registered social landlord
- a voluntary or community organisation
- a community development trust or social enterprise
- a private contractor or developer
- a technical or management consultancy

3.4 Full outsourcing/externalisation/privatisation

The Procurement Policy sets out the possible implications to be considered to assess the suitability of a clearly-defined and stable service specification for outsourcing:

- The level of financial investment that will be made for the benefit of the people of Barnet.
- Economies of scale available that can be obtained by means such as regional or other collaboration.
- The service provider is making best use of the resources applied to the service and can deliver continuous service improvement.
- The level of specialist expertise that will be made available for the benefit of the people of Barnet.
- The volume and predictability of demand.

3.5 Hybrid combining two or more of the above

There may be some circumstances in which a combination of the above options could be the most effective option for a service.

3.6 Cessation of the service

This is only realistic if the Council does not have a statutory duty to provide the service, if there is little or no demand for the service, if the costs of provision outweigh the overall benefits of provision, and/or there are other comparable externally provided services available at reasonable cost to service users and where this will not undermine the council's broader social policy and community well-being objectives.

4. Options Appraisal Process

Options appraisal is the identification and assessment of different methods of delivering or supplying services and/or obtaining new and improved facilities and infrastructure.

No existing service will be considered for an option appraisal if:

There is a history of or consistent poor performance without any cultural capacity for change

following defining the future service needs the service does not appear to have the expertise, culture or capacity to:

- meet future needs or
- be capable of developing a service improvement plan or,
- a SIP fails to be implemented or
- implementation of a SIP fails to achieve expected user service delivery or
- implementation of a SIP fails to achieve targeted performance indicators

Options Appraisals must:

- make a clear statement setting out the rationale for each options appraisal including the reasons why an appraisal is being carried out
- be legitimately triggered by this Strategy and that elected members, officers, users/community organisations and staff/trade unions are aware of this
- assess the relevance of the market intelligence with the specific service being appraised, social needs and local circumstances.
- contain appropriate consultation with user/community and staff/trade union representatives

4.1 Options Appraisal Methodology

Options appraisal must be rigorous and systematic and the following steps applied:

- Agree project group membership and stakeholder involvement
- Identify the objectives
- Define future service needs
- The case for change such as:

-
- changes in demand and need for the service,
 - demographic forecasts,
 - new legislative requirements,
 - current operational problems,
 - government policy and modernisation agenda,
 - new plans and approaches, tackling inequalities and capital investment.
 - Identify the service, social, economic, and environmental impact of each option
 - Market research evidence of the identified options
 - Financial appraisal
 - Identified options comparisons and analysis
 - Sensitivity analysis
 - Risk analysis
 - Recommendations

4.2 Options appraisal in PPP/PFI/Major Projects

An Outline Business Case (OBC) is an essential part of the procurement and approval process in PPP/PFI/Major projects. An OBC includes an option appraisal and should be based on examination of a number of investment scenarios ranging from:

- 'do minimum' (a 'do nothing' option is not realistic),
- partial or limited infrastructure replacement
- full infrastructure replacement
- Public Sector Comparator

4.3 Criteria for Options Appraisal

Advice and support will be provided through the Procurement Gatekeeper and the Strategic Programme Management Team. The following criteria will be used to assess all options:

Corporate Policy

- Democratic accountability – the extent to which each option increases or reduces direct accountability;
- Corporate policies and priorities;
- Transparency and disclosure;
- Absence of legal and regulatory impediments;
- Corporate impact – organisational financial impact on other departments and services.

Service Needs

- Ability to meet current/future social needs of the service or project and accommodate changing levels of demand;

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- Service quality, responsiveness and flexibility to respond to change;
 - Capacity for service improvement, learning and innovation;
 - Service integration and co-ordination with minimal disruption;
 - User involvement in planning, design, implementation and service monitoring;
 - Quality management, leadership and ability to secure improved service delivery;
 - User/community and staff/trade union views.

Equity, Equalities and Diversity

- Equity of service provision;
- Opportunity for additional equality policies and opportunities;
- Proposals for reducing/eliminating existing inequalities.

Financial Assessment

- Ability to identify, access and deploy resources;
- Financial and revenue implications, the need for investment, VFM in widest sense and lifecycle costs and benefits;
- Access to capital and investment plan;
- Affordability – comparing current costs with all projected costs and cash flow.

Employment and Training

- Ability to recruit/retain skilled staff;
- Local economy and supply chains, local labour where appropriate;
- Quality of employment and training.

Environmental Sustainability

- Environmental impact and sustainability

Management Practice

- Exit strategies and their implications and costs;
- Ability to identify, apportion and manage risk.

4.4 Options Appraisal Recommendation

There is no compulsion or statutory requirement to adopt a particular option. The rigour of the appraisal process is very important. Recommendations should follow not only government policies on modernisation and national policies for particular services or sectors but the Council's modernisation agenda and policies for service needs, value for money, democratic accountability, equity, user/community and staff/trade union participation and community well-being.

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Appendix 10

Framework Agreement Guidance

1. Overview

This guidance note explains what a Framework Agreement is and how it is used. It provides guidance on the establishment on a Framework Agreement, awarding call offs and the management and monitoring of Framework Agreements.

2. What is a Framework Agreement?

- A Framework Agreement is an agreement with suppliers to establish the terms of contracts to be awarded during a given period, particularly with regard to price and quality. It sets out the terms and conditions for specific purchases or call offs to be made during the period. The new Procurement Directive describes it as follows: “A framework agreement is an agreement...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” (Article 1(5));
- Framework Agreements can be used for works, supplies or services;
- Under the new Procurement Directive (implemented in the UK in 2006) they are limited to four years;
- A Framework Agreement may be established whether EU procurement rules apply or not. While Framework Agreements set out the terms and conditions on which a call off will be based they do not oblige the Council to procure anything (NB as long as they say this expressly and are not exclusive in scope);
- The benefit this brings is that a Framework Agreement provides the Council with immediate access to a supplier with terms and conditions already agreed i.e. the Council does not have to tender/negotiate these each time it needs to procure something from the supplier involved in the agreement. It can use an alternative supplier where it is felt best value can be provided (as long as the arrangement is not exclusive/this right is reserved – see above).

3. Establishing a Framework Agreement

First of all, a decision must be reached to determine whether a Framework Agreement is the right procurement option for the goods, works or services concerned. This decision can only be reached by undertaking an options appraisal exercise as outlined in Appendix 10;

- The decision should be based on the needs of the Council and the types of purchases it is likely to require. The goods, works or services included should be able to be extended or upgraded at any time provided they do not exceed the scope on which the Agreement was advertised/based;
- If, over its lifetime, the estimated value of the Framework Agreement is likely to exceed relevant EU thresholds it will need to be advertised in the Official Journal of the European Union (OJEU). If the Agreement is not advertised in OJEU, individual call offs may require an OJEU notice where thresholds for

those purchases would be exceeded. This will depend on the size of the call off, and aggregation of call offs is taken into account. Legal advice should be sought and the Council's Financial Regulations should always be checked;

- In terms of financial value, the majority of frameworks over a four year period would be likely to exceed the EU thresholds and, unless there is an exception, Council policy is that Framework Agreements should be advertised in OJEU from the outset;
- Framework Agreements are not necessarily limited to the Council as an individual authority. Where the Council is involved in a collaboration or joint arrangement with another authority and is acting as a central buyer or procurer, then Framework Agreements can be established on behalf of the Council and others;
- Any OJEU notice must include the following:
 - Clarity that a Framework Agreement is being awarded;
 - Details of the contracting authority or authorities involved. With regard to the Council, this may be limited to a particular service or directorate;
 - The length of the Agreement- up to a maximum of four years (under the new rules); and
 - The estimated maximum quantity of goods, works or services to be called off. Advice should be sought from the Procurement officers and the Director of Corporate Governance, when preparing an OJEU notice.
- Framework Agreements are not necessarily limited to a single supplier as they can be established with several suppliers for the same goods, works or services. Where the agreement is not with an individual operator, the directive states there must be a minimum of three, provided there are sufficient numbers to satisfy the selection criteria and/or admissible tenders which meet the award criteria;
- While Framework Agreements cannot exceed four years (under the new rules) there is no requirement for a particular type of agreement to be limited to a particular period of time i.e. an Agreement could be for two years for example. It is also possible that they can include options for extension i.e. two years with an option to extend for a further year, as long as the four year limit is not exceeded; and
- Individual call offs can exceed the four year period but only where this can be justified. Council policy is that within the last three months of a Framework Agreement there should be no exceptional one-off call offs that will push an Agreement substantially over the four-year period. Should there be a need for such a call off legal advice should be sought advice should be sought.

4. Awarding Call Offs

When awarding call off contracts under Framework Agreements full EU procurement procedures are not required, provided proper procedures were applied when setting up the Agreement in the first place. Council policy is that any call off contract should demonstrate value for money and should in no circumstances be anti-competitive. When awarding a call off contract, the procurer should at all times take the necessary

precautions to ensure that the supplier meets the Council requirements and policies outlined at the time the Agreement was established;

Where a Framework Agreement has been established with a single supplier, call offs are undertaken under the terms of the agreement;

Where a Framework Agreement has been established with several suppliers for the same goods, works or services Council policy (see below) is that there are two options for call offs:

Call Off under the terms of the Agreement

As with a single supplier, a call off could be made under the terms of the Agreement to the supplier who is able to offer value for money. Determination of value for money must be based on criteria set when the Agreement was established.

Call off under mini-competition (see below)

Council policy stipulates that at all times where all suppliers included within the Agreement are capable of meeting the Council's needs, a mini competition should be held by way of a confidential written tender. The call off should be awarded to the supplier offering the best value for money based on the criteria set when the Agreement was established.

Article 32(4) of the new Directive specifically provides that where there are several suppliers who are party to the agreement, contracts may be awarded either:

- by strict application of the terms laid down in the framework agreement (i.e. without reopening competition); or
- where all of the precise terms are not laid down in the framework, by competition between the original parties on the basis of more specific (but not different) terms, or on the basis of terms referred to in the original specifications;
- where there is to be a mini competition between the original parties, the following procedures must be used:
- for every contract to be awarded, the Council must contact in writing all of the parties to the agreement who are capable of performing the particular contract;
- sufficient time limits must be allowed for the submission of tenders (taking into account such matters as the complexity of the contract);
- all tenders must be in writing, and the content must remain confidential until the stated time limit for reply; and
- the contract must be awarded on the basis of the award criteria set out in the original specifications to the framework agreement, so for example, if inclusion in the framework was stated to be on the basis of most economically advantageous tender, it is not permissible to then assess actual bids on the basis of lowest price alone.

4. Managing and Monitoring Framework Agreements

It is important that Framework Agreements are properly managed and monitored. Governance arrangements need to be put in place to ensure the management and monitoring of:

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- Performance;
 - Compliance with contract specification;
 - Cost;
 - User satisfaction; and
 - Risk.
 - Where appropriate, monitoring should include the benchmarking of contractor/partner performance against both the performance of the internal provider and against each other where there is more than one provider. This should be used to inform the management of the Framework Agreement and help advise any decision taken on the future of a service subsequent to the Agreement.
 - Contractor/partner satisfaction should also be regularly monitored and assessed.
 - Monitoring information will be required to be reported to the Council's Strategic Programme Management Team and relevant Committee on a regular basis as directed.

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Appendix 11

Establishing Ethics Walls

1. Overview

If a procurement exercise involves a bid from an internal part of the Council (in competition with external bidders), ethics walls need to be considered and set up at an early stage of planning. This guidance note explains why ethics walls are necessary and how they should be established and documented.

2. Council Projects

Where an NCC project of whatever type (works, services or supplies) involves a bid from an internal part of the NCC organisation, in competition with external bidders, ethics walls (sometimes called “chinese walls”) need to be considered and set up at an early stage of the planning for the project.

3. What is an Ethics Wall?

An ethics wall simply means that you ensure that the bidding part of the organisation is separate from, and communicates formally with, the client part of the organisation - so that the lines between them are clearly drawn.

4. Why is this necessary?

The Public Contracts Regulations (which govern large procurements advertised throughout Europe in OJEU) say expressly that contracting authorities like NCC have to treat any in-house bid in exactly the same way as an external bid. This is to ensure the fairness and openness of the procedure. If the in-house bid team had an unfair advantage by talking much more freely to the client team than the other bidders, the procurement could be adversely affected and NCC could be open to legal challenge. This could be a major risk to the procurement and ethics walls therefore need to be taken seriously by all concerned – both in terms of the need to have such a division in place, and how it operates in practice. Even where procurements are not governed by the Regulations, ethics walls are good practice and should be set up where appropriate.

5. When should this be considered on a project?

At the earliest stages of planning the project, the timetable and the personnel involved. At this stage, the bid team can discuss with the client team how the two parts of the organisation will work during the project, before any key information is exchanged that might make the process unfair to other bidders.

6. What sort of thing should be considered?

1. Who will be on the client team? In other words, who manages the procurement, who sets the evaluation criteria, evaluates the bids and makes the decisions?
2. Who will be on the in-house bidding team?
3. In particular, who on the client team will prepare the technical specification setting out what bidders have to submit in their tenders? This is a key element of the project, where information should not be released to the in house bidding team ahead of it going to other bidders. The people preparing or advising on

the detail of the specification should not be the people writing the bid – there needs to be very clear separation on this.

4. Who on the client side (i.e. NCC corporately) is going to advise on related matters – e.g. environmental, health and safety, equalities? Those personnel should not then also advise the in-house bid team, so the ethics wall has to run right through the organisation.
5. Who on the client side will provide legal and financial advice – will this come from within NCC, or from external advisers? If the in-house team also needs input on these matters, where should it get this from?
6. If the in-house bid has to be signed off corporately at a high level, this should be done by a Director or other senior officer who is not involved in the client-side bid evaluation/contract award process.
7. Escalation – if any issues arise between the bidding team and the client team, how will these be escalated and resolved, to maintain the fairness of the process?

7. Writing it Down

- Once the ethics wall arrangements have been agreed at the early stages of the project, these should be documented in diagram form (or whatever is most appropriate), making clear which individuals are in which teams. This should be kept up to date throughout the project. This document will form the basis of the audit trail, if there is any challenge to the procurement from an aggrieved bidder who feels that the in-house team has received preferential treatment.
- The arrangements need to be made clear in writing to all who are involved on either side of the ethics wall, so there can be no misunderstandings. In particular, if there are any other people who may review the bids (e.g. the staff side, external consultants) these ethics walls arrangements must also be made clear to those individuals.

8. Giving Information to the In-House Team

Once the ethics wall is in place, then from that stage in the project the in-house team should be treated exactly like the other bidders, i.e.

- It does not get any information ahead of the other bidders;
- It does not get any more information than the other bidders get.

In particular, care needs to be taken with “corridor chat” – this is a formal bidding process and should be approached with care. It helps if all communication with all the bidders is run through a central point, to control and document the flow of information – again this help with the audit trail in case of challenge.

9. Escalation of Issues

If any difficult issues arise in connection with the ethics wall (for instance an argument about who is involved on which side, or who gets what information), and these can't be easily resolved, these should be escalated in accordance with the process that is agreed at the start of the project (see 6 above).

Appendix 12

Setting Evaluation Criteria

1. Overview

This guidance note assists in setting the evaluation criteria to be used in assessing bids. It gives examples of criteria and explains the use of evaluation matrix and clarification questions.

2. Evaluation Criteria

The evaluation criteria are the factors that you specify in advance, against which you will formally assess the bids you receive.

They are set out in the Invitation to Tender documentation (or Invitation to Negotiate in limited negotiation procedures).

The purpose of setting the criteria out in advance is:

- to make clear to bidders what you will be judging them on, so they can tailor their bids to meet your needs; and
- to ensure a clear and auditable evaluation methodology in case of any future challenge to the procedure.

3. Legal Regulation

Where your procurement is over the threshold for being advertised in OJEU, the Public Contracts Regulations contain some provisions that regulate your criteria and advice should be sought from the Procurement Team in Director of Corporate Governance to check that the Regulations have been complied with.

Where you are not carrying out an OJEU procedure, but simply tendering under NCC's Financial Regulations, the evaluation criteria should still be clearly set out in the tender documentation.

4. Agreeing the Criteria in Advance

Thought should be given to agreeing the criteria at the very earliest stages of scoping the project, to ensure they are effective and reflect all the fundamental requirements of NCC for the procurement. If they are rushed at the last minute, or not well thought out, this could:

- adversely affect the quality of the bids that you get back; and
- adversely affect NCC's ability to choose between bidders on a sound basis.

It may well be unlawful to pick criteria that can only be met by one or two of the bidders – the criteria must be fair i.e. as objective as possible.

5. Disclosure of Weightings

The Public Contracts Regulations require that the weightings of the criteria are disclosed to bidders in the ITT – so they know what is important to NCC. Where there are sub-criteria, the weightings for these should also be given to the bidders. This is also good practice in non-OJEU procedures.

6. The Nature of the Criteria

The evaluation criteria themselves should clearly relate to the subject matter of the contract itself. So:

Factors that are clearly unrelated to the project should not be included;

- Social policy-type criteria (equalities, local working, SMEs) can be difficult legally
- seek advice from the Procurement Team in Director of Corporate Governance about the extent to which these can be taken into account, well in advance of agreeing the criteria list;
- Criteria that would directly or indirectly discriminate against a non-local or non-UK bidder are again difficult legally (whatever the size of the procurement) and may leave NCC open to challenge – advice should be sought from the Procurement Team in Director of Corporate Governance. In particular, wherever possible refer to European or International standards, not British ones;
- In an OJEU restricted procedure procurement, the bidders have already been pre-selected to receive the ITT by completing a pre-qualification questionnaire, which looks at contractor selection (or shortlisting) factors. These contractor factors should not generally be revisited at the evaluation stage. (For instance, criteria like “financial stability”, “size of organisation”, “qualifications of key personnel” or “technical capacity” should not be on the list of evaluation criteria in an OJEU procurement, as these have been checked prior to shortlisting at the pre-qualification stage).

The items that are listed should be real criteria, not just a list of tender return items – these would tell the contractor nothing more what he must send you in terms of bits of paper. For instance, use words like “quality”, “deliverability”, “appropriateness”, and “suitability”. By way of example, “proposals for environmental monitoring” simply says what the tender return requirement is – the award criterion could be expressed as “quality and acceptability to NCC of the bidder’s environmental proposals”.

When drawing up the criteria, careful thought needs to be given as to:

- Whether they really reflect all the requirements for the procurement (including things like environmental matters, community interface etc);
- How the criteria will operate to allow NCC (acting fairly and transparently) to select the best contractor for the job.

For instance, having “50% price/50% quality”:

- Tells the contractor nothing about what we are looking for in terms of quality;
- Probably isn’t specific enough about price either; and
- Limits the flexibility for NCC to probe and select on the basis of what it really needs.

If you are asking for a long list of information, make sure your evaluation criteria can be linked to the information you are asking for. In other words which particular

information do you review, to do your scoring on each separate criterion? Do your criteria cover everything you have asked for? Is there some tender information that doesn't fit within one of your criteria?

7. Examples of Criteria on Quality

The basic principle is that the criteria must be transparent i.e. they must be capable of being clearly understood by the bidders – so they know what NCC wants and what they need to be able to show to win the tender. Criteria that can be used to reflect the quality requirements include:

- Fitness for purpose
- Compliance with specification
- Functional characteristics
- Aesthetic appeal
- Availability of spares
- Technical merit
- Quality of proposals for ongoing maintenance
- Quality and suitability of environmental proposals
- Sustainability
- Period for completion
- Acceptability of bidder's methodology for service provision
- Understanding of equalities requirements and acceptability of equalities proposals
- Acceptance of legal contract terms
- Integration of health and safety requirements
- Deliverability of proposals

Dates for delivery.

This is not an exhaustive list – other criteria can be used as long as they are economic in nature and relate to the subject matter of what you are procuring.

8. Examples of Price Criteria

On the financial side, criteria can include:

- Price [if it is a simple pricing task for the bidders]
- Whole life costs [a better means of looking at long term costs]
- Value for money
- Mobilisation costs
- Take-on costs
- Cost effectiveness
- Pricing of spares.

9. More Strategic Criteria

If this is a key procurement for the Council in terms of capital costs, strategic importance, or reputational damage - if it goes wrong, etc - thought should be given to assessing how to evaluate the importance of these factors. For instance, think about criteria that reflect these requirements, such as:

- Demonstration of commitment to Barnet's key targets and deliverables for the project;
- Understanding of Barnet's strategic drivers and requirements;
- Appreciation of, and proposals for managing, key project risks.

You should always bear in mind, however, that any evaluation criteria have to be relevant to the subject matter of the contract and must have regard to the nature, quantity and purpose of the contract.

For instance, it is not necessarily relevant to a contract for delivering a transport system to include an evaluation criterion of tenderer's proposals to comply with fair trade requirements whereas it may be relevant to ask for tenderer's proposals as to how they intend the transport system to comply with certain sustainability requirements (such as the requirement to provide electric buses, for example) where these needs are set out within the specification.

You will have to think about what information you need back from bidders, to enable you to assess them under these criteria, including what hard evidence you would need to satisfy yourself;

Criteria like these can be unclear and harder for bidders to understand, so you need to make sure that you explain clearly in your ITT what is required and what we are looking for in their responses. It also needs to be agreed in advance in the evaluation team what you are looking for in the bid responses, to enable you to score the responses properly;

It is also possible that such criteria, which are relatively subjective in nature, could be open to misinterpretation or abuse – if you are proposing to use criteria like this, advice should always be sought from the Procurement Team in Director of Corporate Governance, and care should be taken to ensure that the criteria are applied as objectively and transparently as possible; Decisions should be clearly documented on the final evaluation report.

10. Changing the Criteria

Once the criteria (or weightings) have been specified to bidders in the tender documentation, they cannot be changed after the bids have been received. If, for a project specific reason, you need to amend the criteria or weightings after issue of the tender documentation, but before bids are due back then:

- This must be for an objective reason, and not one that will influence the choice of contractor;
- The amended criteria/weightings should be sent asap, to all the bidders at the same time; and

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- If there is insufficient time before the bid return date for the bidders to adjust their tenders to reflect the new criteria, the tender return date must be put back by an appropriate period, to allow this.

11. Evaluation Matrix

To help with the actual evaluation of bids by the evaluation team, the evaluation criteria should be listed in an evaluation matrix sheet, with relevant weightings, that is filled in by the team at the time of bid review – this will help to provide a clear audit trail.

12. Clarification Questions

Think in advance whether you are going to ask bidders questions on their tenders (this is appropriate if areas of their tenders need clarifying). This is not an opportunity to allow some bidders to improve their tenders, as post-tender negotiation is not allowed, so care is needed here. Think about how you will take responses to clarification questions into account in your scoring.

13. Interviewing Bidders

Do you want to be able to interview bidders, after reviewing their bids? This can again be useful if there are areas of the tenders that need clarifying. You can evaluate interviews in two ways:

- a) use the interview to adjust the interim scoring done prior to interview (and document your adjustments and the reasons for them) – if you use this method, you are basically reviewing the scores on the same criteria. Care needs to be taken that you are not just marking the bidder's presentation style; or
- b) keep back a percentage of the scores (e.g. from the overall total for quality matters) and then award them after the interview. This is more unusual (and has to be handled very carefully), but the advantage of doing this is that you can have a separate, clearly stated set of criteria for this interview stage.

Whichever way you do it, it needs to be very clear in the tender documentation, to both the bidders and the evaluation team, how you are managing and scoring this part of the process. In either case, take advice from the Director of Corporate Governance procurement team.

14. In-house bids

If you are undertaking a procurement that includes an in-house bid from any part of NCC, extra care is necessary when drawing up your evaluation criteria. The Public Contracts Regulations expressly require NCC to treat its in-house bids on the same basis as its external bids, and the same should apply to non-OJEU procurements. The audit trail becomes particularly important here. Where the procurement may involve a potential TUPE transfer if an external bidder is successful, then particular concerns apply and advice must always be sought in good time from the Procurement Team in Director of Corporate Governance.

15. Audit Trail

The audit trail is vital in all procurements, whatever their size or purpose. As well as clear criteria, the audit trail should include details of:

- the evaluation team;
- the evaluation methodology;

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- an evaluation report that records decisions and the reasons for them, in case of challenge.

Appendix 13

Soft Market Testing

1. What is a Soft Market Test?

In helping to define the future of a service and in identifying and considering the options available, consideration should be given to soft market testing with service providers active in the market place.

It is the process of seeking the input from the market as to what might be the most attractive way of scoping and packaging a service. It is undertaken early in the development stage of a proposal and prior to determining a procurement opportunity.

Soft market testing provides the opportunity of gaining an understanding as to how service providers in the market might approach the delivery of a service, and how they might address particular local circumstances of key issues that are likely to impact on the delivery of the service in future. Importantly, it helps give an early insight into the likely level of interest there is from the market in delivering a service.

The information sought from the market will be dependent on the service under review and the extent of market information already known. The information sought can include: scope of service, level of interest, costs, affordability issues, payment mechanisms, risk, potential contractual arrangements and issues relating to timing.

A soft market test is not a substitute for an options appraisal and in itself cannot be used to conclude that current in house arrangements provide best value (unless there is a documented audit trail and evidence base and this is agreed corporately).

Market consultations can be a problematic issue in procurement/legal terms. Purchasers often wish to consult the market, including potential providers, before establishing specifications or procedures for a particular contract. This gives rise to the danger that the specification or project will be so structured as to improve the chances of a particular provider of winning the contract (as well as that provider getting more notice of the detail of the procurement than his competitors). This might infringe the general EU principle of fair treatment and equality of providers. The general legal view is that market consultations are permitted, provided that this does not have the effect of precluding or distorting competition. Advice can therefore be sought and accepted from the market, as long as care is taken (and this is documented) to ensure particular contractors are not advantaged or disadvantaged and that full competition is maintained throughout.

2. Undertaking a Soft Market Test

Undertaking a soft market test and engaging the market in a way that is meaningful and productive involves a great deal of preparation. It should involve the preparation of a pack of information that provides information for the market on the Council, the service under review, the basic proposals and the scope of the scheme. The pack

should outline what it is that is being sought from the market and how the market should respond.

Some responses from the market may prove helpful while others may prove to be nothing more than a sales pitch. Depending on the responses, some objective pre-evaluation may be needed to cut down the number of respondents to a number that enables a more practical way of working.

It is important to note that soft market testing is not formally part of a procurement process and terms such as 'bidders' and 'expressions of interest' should be avoided. It should also be noted that a soft market test does not include or preclude any organisation from participating in any subsequent procurement that may follow.

While a soft market test should be carried out early in the development of proposals, it should not be undertaken too early and leave the Council at risk of appearing uncertain and vague as to what it wants. Timing of the soft market test is very important.

Before undertaking a soft market test legal advice should be sought in order to ensure that any future potential tenderers are not given a head start over others and to prevent the potential for discrimination of any kind.

3. How to engage the Market

There are a range of ways that the market can be engaged and, again, it depends on the service under review and the extent of market information already known. Ways of engaging the market include:

- Notices in trade magazines;
- Open days or conferences;
- Telephone surveys;
- Questionnaires; and
- One to one interviews/meetings.

Can the Authority simply approach named contractors? Probably yes, but it is preferable to have some kind of advertisement/open process, so contractors get the opportunity to participate if they want to.

Consultation with contractors can be undertaken on a one-to-one basis, as long as care is taken to ensure that the process is fair and auditable. A written questionnaire and/or open event makes it easier to demonstrate that a clear and fair process has been followed.

There can then be individual follow-up with some or all contractors, following the open event/receipt of completed questionnaires, but care is needed here to ensure that a level playing field is maintained in any future procurement

4. Key Principles

In undertaking a soft market test there are a number of key principles that should be followed:

- Take legal and other professional advice before commencing;
- Prepare thoroughly before commencing;

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- Be clear as to what it is that is sought from the exercise;
 - Do not waste time dealing with sales pitches or dealing with parts of the market that do not help the process;
 - Do not discriminate or give an part of the market commercial advantage over any other; and
 - Do not use inappropriate language such as ‘bidder’ and ‘expressions of interest’;
Ensure there is an audit trail and document everything.
 - It is therefore important that: -
 - all firms taking part in any written questionnaire process and/or open event get the same notice and the same information;
 - that all information given out, sent, discussed etc is thoroughly documented to enable an audit trail in the event of potential challenge; and
 - the information given out/discussed at the open event (e.g. copies of presentations, answers to questions from the floor), and in any follow-up, is identified and packaged, so that it can be given to parties who cannot attend but may still want to know what is happening. It should also therefore be covered in the brief to be issued when potential bidders respond to the actual procurement notice in due course.

5. Confidential Information

As a separate point, care must be taken if disclosing/handing over any confidential or sensitive information about the relevant business or operation. The level of information that we are prepared to disclose needs to be discussed and agreed in advance, to ensure (a) that we are not giving ourselves any problems over sensitive information that ought not to be revealed outside NCC and also (b) that we are not inadvertently advantaging the recipients, in any later competitive process.

Appendix 14

E-Procurement Policy

1. Overview

This policy sets out our commitment to e-procurement. It provides details of the internal market place, e-tendering, e-ordering, purchase cards and e-auctions.

2. Policy

The Council is committed to doing its business electronically, particularly to modernise and improve the service it provides. We are committed to making the best use of information and communications technology as part of our procurement processes in order to improve the efficiency and effectiveness of our activities. This commitment is outlined in our eProcurement policy covering the following main areas:

3. Purchase orders

The electronic purchasing system enables officers to purchase automatically direct from contracted or framework suppliers. It provides tangible savings as well as other intangible benefits including better governance and management information.

While particular areas of savings have been realised we are committed to achieving further savings from the collection and manipulation of procurement data.

4. Internal Market Place

We currently operate an internal market as part of POPS. It comprises an on line catalogue enabling end users to select and order specific items directly with contracts with suppliers being managed through our corporate purchasing team. We are committed to further rolling out the internal market place across the Council.

5. E- Tendering

We are committed to introducing e-tendering as an extension of the existing paper based process for both buying and supplying activity. Our aims are to be able to reduce direct tendering costs and reduce the tender cycle time.

An e-tendering solution is available through the London Purchasing Organisation and initial investigations have highlighted its suitability for use by the Council. Further work is to be undertaken.

6. E-Ordering

We are committed to using e-ordering and invoicing to reduce paperwork in ordering goods and services across the Council.

7. Purchase Cards

We are committed to introducing the use of Purchase Cards within the Council, particularly for the purchase of high volume, low value and low risk goods and services.

We are committed to ensuring that Purchase cards reduce paper ordering and payment processes and help deliver improved efficiency and reduce costs through a streamlining of the process for low value purchases and by minimising administration.

8. E- Auctions

We are committed to ensuring that e- auctions are utilised as part of the procurement processes we use in order to help to drive out efficiencies where there is an active market by providing an opportunity for suppliers to bid against the market price.

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Appendix 15

Risk management

1. Overview

This process sets out how risk management is built into our procurement processes from Options Appraisal through to procurement and contract management. It explains the relationship between risk management and procurement. A risk matrix is provided to identify the main risks at all stages of the procurement process.

2. Risk management - introduction

Effective Risk Management leads to better decision-making and the achievement of service objectives. When embedded within existing planning, decision taking and option appraisal processes risk management provides a basis for ensuring implications are thought through, and that the impact of decisions, initiatives and projects are considered and conflicts balanced. Large scale, strategic procurement activity requires a particular focus on risk management not only because of the financial and operational consequences of failure, but perhaps more significantly because the redefinition of future service requirements will in many cases involve the deliberate taking of managed risk to achieve the benefits of service improvements.

3. Overall approach

There are three distinct aspects to the relationship between risk management and procurement set out below:

Firstly, the Council's overall risk management strategy and culture has a major impact on setting the environment within which procurement processes take place and on determining the scope and nature of procurements. This includes:

- Impact on development of strategic service objectives
- Impact on definition of future service requirements
- Breadth of stakeholder definition and engagement
- Risk aversion as barrier to competitive procurement
- Avoidance rather than management
- Constrains and restricts scope and range of supply options

Secondly, a number of risk management processes are vital components within procurement processes.

- Options appraisal
- Procurement of preferred option
- Risk transfer/PFIs

- Project management

Thirdly, the procurement process itself has a number of risks which need to be managed and minimised, for example, attracting sufficient high quality bidders and fully evaluating bids to identify the most effective bid which meets the service objectives and the Council's criteria.

4. Risk Matrix on the procurement process

The Risk Matrix below identifies the main risks in the procurement process ranging from options appraisal and market research, the procurement and contract award process, secondment or transfer stage, and service delivery and performance.

Risk	Impact
Options Appraisal and Market Research	
Full range of options not considered at appraisal stage	• best practice options appraisal process not fully understood. • officers working to 'hidden agenda'.
Market research information is incidental and lacking evidence	• inadequate/inexperienced research staff and/or poor methodology.
Service managers commence procurement process without completing prior review and options stages	• poor corporate management. • corporate procurement strategy and best practice needs reinforcing and re-communicating to managers.
Options appraisal result foregone conclusion for staff and trade unions and claim 'hidden agenda'	• failure to fully examine all options, need to revise guidance and training.
Decline in staff morale, increased sickness absence and staff turnover	• lack of staff and trade union involvement, secrecy, poor communications, hidden agenda and inadequate options appraisal and/or failure to include in-house bid.
Opposition of user/community and/or staff/trade union to appraisal process and recommendations	• can be minimised by involvement of users/community and staff/trade union representatives.
Council locked into a single external provider	• failure of options appraisal to examine all the permutations and their implications.
Procurement Process	
Low response to contract advert	• lack of ability and/or capacity of external providers. • external providers make commercial judgement on profitability. • External suppliers unwilling to deal with the Council
Poorly prepared in-house option	• service users and stakeholders not fully involved. • lack of corporate/management commitment and priority. • inadequate resources to prepare bid.
Some shortlisted bidders withdraw before bid submission date	• bidders make commercial decision not to bid. • bidders have financial crisis. • project is too complex • failure to fully explain project objectives and procurement process to bidders.
Track record of provider – service delivery,	• failure of market research, questionnaire

environmental, employment, health and safety – not revealed until after shortlisting	and investigation of providers at shortlisting.
Provider with limited capacity is shortlisted	• failure of market research, questionnaire and investigation of providers at shortlisting.
Lack of audit trail regarding decisions at shortlisting and/or contract award	• lack of planning and organisation of evaluation process. • evaluation team lacking support staff and technical advice.
ITN/ITT does not fully reflect user needs and subject to criticism and opposition from user and community organisations	• user needs not fully integrated into contract design and procurement.
Evaluation of options and/or bids is less than comprehensive	• failure to agree evaluation criteria at OJEC stage. • poor management of the procurement process
Some bidders submit incomplete bids	• bidders have decided to limit their bid costs and/or believe that they will still have a chance of winning the contract. • instructions to bidders are not clear, lack of explanation and communication of requirements to bidders.
Disclosure of confidential information	• accidental loss of documents but this may not result in disclosure. • release of evaluation findings in advance of Council decision reflects breakdown in partnership approach.
Unequal treatment of bidders: - information disclosure unequal - unequal evaluation of bids	• inadequate management of the procurement process, protocols and toolkit may require strengthening and additional training.
Contract Award, Secondment, Transfer	
Disputes/industrial action prior to secondment or transfer	• lack of consultation with staff and trade unions. • failure to include Fair Employment and/or Code of Practice in contract or inadequate wording of contract clauses.
Loss of key Council staff thus reducing Council capacity	• failure to fully identify the employment and corporate capacity implications at options appraisal.
Service delivery and performance	
Corporate policies not fully implemented by providers	• inadequate resources assigned to contract management. • bidders not made fully aware of policies due to inexperienced management of procurement process.
Corporate impact more substantial and costly than anticipated	• failure to carry out impact assessment at option appraisal.
Higher than anticipated transaction and monitoring costs	• inadequate market research and/or financial-led procurement.
Service performance does not meet required standards	• under-resourced bid not identified at evaluation stage. • contract decision based primarily on price. • inadequate client monitoring and contract management. • lack of performance standards and measures built into contract at ITT/ITN stage.

Provider has high turnover of staff	<ul style="list-style-type: none"> • cuts in pay and conditions because Fair Employment and Code of Practice not enforced.
Equalities for users and/or staff not mainstreamed	<ul style="list-style-type: none"> • poorly prepared ITN/ITT and/or lack of user/community and/or staff/trade union representatives.
High cost of contract termination	<ul style="list-style-type: none"> • failure to devise an exit strategy at planning stage. • failure to include address potential termination in contract conditions.
Provider imposes price increases, particularly for non-specified work	<ul style="list-style-type: none"> • failure of specification and contract to fully reflect needs of the service and accommodate changing circumstances.
Council has reduced control and flexibility	<ul style="list-style-type: none"> • failure to consider at options appraisal stage.
Provider fails to achieve required environmental performance standards	<ul style="list-style-type: none"> • management and minimisation • inadequate coverage of the issue in contract specification • failure to monitor contract performance • breach of legislation by provider • adverse publicity

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Appendix 16

Fair Employment Policy

1. Overview

Some Service Reviews and Major Project procurements may result in a change in the way services are supplied – for example, a private public partnership or a form of outsourcing. This could result in staff transferring to another employer (in line with government policy).

This policy sets out the ways in which we will seek to minimise the negative impact at all stages of the procurement process by proper and systematic consultation. It explains how we will consider applying all aspects of the government's Code of Practice on Workforce Matters in Local Authority Service Contracts (subject to the possible effect on value for money, core objectives or service procurement).

2. Policy

The Council is committed to providing 'Value for Money' Services for the people of Barnet, and acknowledges that a skilled and competitive workforce is a vital component of the council's ability to respond to the rapidly changing public sector environment. Accordingly, staff development will be given a high priority within the improvement plans of Service Reviews. However, there are many potential service delivery options within a Service Review framework including:

- In house provision.
- Mixed service provision (with other providers delivering part of the service under contract).
- Partnerships and partnering with public, private and voluntary sectors.
- Framework agreements where a core in-house workforce is supplemented to address fluctuating demand.
- Other contract arrangements including PPP / PFI and outsourcing. N.B. Consideration will be given to excluding service provision in regard to these contractual arrangements.

Major procurement projects and the Service Review process itself may result in staff, valued and respected by the Council, being transferred to another employer in line with government policy. The Council recognises fair employment as an integral part of any procurement project; at appropriate points in any process a full range of options from use of council staff through secondment to full-scale transfer will be fully explored. The Council also recognises that procurement exercises that may result in the transfer of staff or other impact on terms and conditions of employment have the potential to become a source of uncertainty and anxiety for staff. Although this cannot be eliminated entirely, the Council will seek to minimise the negative impact of the procurement process by proper and systematic consultation, which should also minimise unexpected decisions.

The Council will consider applying all aspects of the government's Code of Practice on Workforce Matters in Local Authority Service Contracts subject to the possible effect

on value for money, core objectives or service procurement. The Code sets out policies for:

- Workforce matters;
- Treatment of transferees;
- Treatment of new joiners to an outsourced contract;
- Pension arrangements for new joiners to an outsourced contract;
- Monitoring arrangements;
- Enforcement;
- Subcontractors;
- Operation of the Code; and
- Alternative Dispute Resolution Procedure.

The Code implements the Council's framework for the treatment of staff involved in transfers. The framework comprises:

- Direct involvement of appropriate elected members in the procurement process.
- Transparent and timely discussions with all staff potentially affected by procurement proposals and decisions; trade union representatives will be made aware of such proposals at an early date.
- Evaluation criteria including employment issues, staff management issues, equalities and health & safety relevant to the delivery of the contract. The equalities criteria will cover equality in service delivery as well as employment practices. This will apply to the pre-qualification process as well as to shortlisted bidders.
- Any external service providers will be expected to participate in the training of the unemployed and school leavers to assist in meeting the Council's social policy obligations.
- Involvement of staff group representatives in discussions with shortlisted bidders and reasonable access to appropriate documentation related to the bid subject to necessary restrictions for commercial confidentiality.
- Trade union representatives having the opportunity to put forward written comments for evaluation, which will be taken into account in the evaluation process.
- The Council retaining full and final responsibility for the final selection of the preferred bidder, which will take into account all the evaluation criteria for assessing quality and best value. Evidence-based reasons for the final selection will be presented to trade union representatives.

Detailed arrangements for each of the above principles will differ from project to project; each procurement exercise will produce a specific statement of how the principles will be applied to that project including such issues as mechanisms for consultation and involvement, access to information and to bidders etc.

The Council will also rely on the Staff Group representatives' submissions to identify concerns, which could be taken forward by the Council at the appropriate stage in the process to secure commitments for those members of staff who will transfer.

The Council will, normally at the Invitation to Negotiate stage, seek commitment from potential partners to terms in addition to the protection offered by TUPE. These are:

- A commitment that the service provider will not operate a two-tier workforce.
- A commitment to annual local government pay awards unless otherwise agreed with the recognised trade unions.
- A commitment to seek admitted body status to the Local Government Pension Scheme so that all TUPE transferred employees have the option of remaining within the local authority pension scheme and there is capacity to add that choice for any new staff.
- A commitment to equal opportunities, work-life balance policies, whistleblowing policies and health and safety.
- A commitment to staff training and development.
- A commitment to maintaining trade union recognition for transferred and new staff who must have equal opportunity to join a recognised trade union.
- No restrictions on staff promotion, for example, requiring transferred staff to transfer to the employers own terms and conditions.
- Trade union facility time – the new employer will be required to specify the amount and nature of facility time it is proposing. The new employer may wish to agree this in advance with the appropriate trade unions.
- Check-off – new employer will be required to provide a check-off facility for the deduction of trade union subscriptions.
- Commitment to the London Living Wage (LLW), a London weighted minimum wage, which takes into account the higher living costs of London worked out by the Greater London Authority (GLA) London Living wage Unit.
- The current job evaluation scheme would be applied for the duration of the contract.
- The contractor gives an undertaking not to offshore work and not to transfer jobs out of the Borough.
- No restrictions on the employment status of branch trade union officers in the representation of their members.
- Contractors will be required to make a contribution to the Council's Corporate facility time budget to ensure transferred employees continue to receive support from trade union branches.

The level and commitment will be assessed for impact on value for money, core objectives and/or service procurement on a project-by-project basis.

Furthermore, the evaluation of bids and proposals will include:

- an assessment of the contractors' ability to recruit and retain an adequately skilled and experienced staff; and

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- proposed implementation of equalities and diversity policies and practices for service users and staff;
 - the contractor's commitment and ability to implement the Code of Practice on Workforce Matters which will be a condition of contract.
 - During the procurement process the Council will:
 - Provide appropriate information to staff and trade unions at all stages of the procurement process;
 - Establish regular consultation processes with staff and trade unions at appropriate frequencies;
 - Provide an opportunity for trade unions to comment on all aspects of the procurement process at key milestones of the procurement process;
 - Facilitate meetings between trade unions and potential providers at key stages of the procurement process;
 - The trade unions will select their own representatives for meetings with contractors and site visits;
 - Allow full discussions between trade unions and the Council's preferred bidder prior to contract award; and
 - Use a minimum of temporary and agency staff during the procurement process, consistent with service and operational objectives.

Post transfer contract arrangements

The Council will secure that contracts and SIPs will contain arrangements to monitor how the contractor implements the human resource and TUPE requirements after transfer in line with the good practice adopted by some government departments. The National Joint Council's Agreement on Best Value states that "the Council as transferor has a duty to safeguard, as far as it lawfully can, the rights and interests of the transferred employees, including pay, conditions and pensions.

Monitoring arrangements will form part of the negotiations prior to implementation of any contract or SIP. The purpose is to:

- Set out meeting timetables and agenda procedures.
- address perceived (or otherwise) issues of non-performance in relation to Employee matters.
- identify appropriate attendees from the contractor, Council and staffside representation.
- Ensure ability to arrange ad-hoc communications and meetings as necessary outside of this formal process.

Post transfer contract arrangements will be cross referenced with the Code of Practice on Workforce Matters in Local Authority Service Contracts.

Secondment of staff

Partnership and joint venture projects should consider the scope for the secondment of staff from the Council (and where relevant, other public sector organisations).

Subcontracting to in-house services

So far as the law will allow consideration will be given to the potential for subcontracting support services to well performing in-house services, for example, in PPP/PFI projects, trusts, arms' length companies and partnerships.

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Appendix 17

Fair Employment – Staff Engagement Policy

1. Overview

This policy is closely related to the Fair Employment Policy. It provides further detail of how we will engage with staff and trade union representatives during procurement activities. The policy sets out key principles for engagement and explains how engagement will take place at different stages of the procurement process including documentation, bidder discussions and evaluation.

The policy also includes specific guidance in relation to engagement with staff and trade union representatives during options appraisal and in-house bids.

2. Introduction

The Fair Employment Charter includes the following commitments relating to the involvement of staff and their representatives in procurements where there exists the potential for transfer to another employer:

- Consultation with trade union representatives in consideration of procurement options at an early date.
- Transparent and timely discussions with all staff potentially affected by procurement proposals.
- Involvement of staff group representatives in discussions with shortlisted bidders and reasonable access to appropriate documentation related to the bid.
- Trade union representatives having the opportunity to put forward written comments for evaluation, which will be taken into account in the evaluation process and for these to be presented to the relevant evaluation and decision-making body.

Clearly there is a requirement for agreed guidelines to govern these processes and ensure that the Council, the staff and indeed external organisations involved in such procurements have their respective interests properly protected. Furthermore, the increasing emphasis on comprehensive options appraisal as a fundamental aspect of Service Reviews and other procurements leads to the need for similar guidelines to accommodate that process as well as procurements directly.

The degree of formality of the protocols necessary will vary according to the stage of the process, and will reflect the Council's risk assessment of each part of a procurement. "Internal only" stages such as options appraisal will be governed by relatively light touch guidelines, while relationships with potential or actual bidders during a procurement are likely to require a more detailed and explicit framework.

3. Procurement Proposal

A comprehensive risk assessment will be a key feature of the formulation of any procurement proposal. As part of this process, any procurement where there is the potential that staff may be transferred may consider the exclusion of the workforce from the services to be procured. This consideration will depend to some extent on the nature of the service in question. It will depend on the business case and the materiality of the workforce in the overall service.

In the case of a PFI procurement, the OBC will enable the council to formalise a view on risk transfer and obtain government approval of the exclusion.

4. Principles

To be effective, protocols require compliance by all parties. Rather than write a set of rules, which may not be enforceable, a set of principles has been established which all parties (elected members, officers, staff/trade union representatives and user/community representatives) sign up to. The council's disciplinary and grievance procedure [could be used to deal with any breaches of confidentiality](#).

- Principle of partnership;
- Acting in the public interest and safeguarding public service ethos;
- Information concerning market analysis, potential providers and procurement documentation will be shared;
- Non-disclosure of confidential information;
- Staff/trade union and/or user/community representatives may be required to sign a confidentiality agreement if requested by an external bidder;
- Contact with bidders must be within the terms of the protocols and procurement policy;
- Officers and community/trade union representatives who fail to act according to these principles may be replaced;

Appropriate action will be taken by the Council in any breaches of confidentiality or biased assistance to external bidders to ensure that all parties comply with the policies and protocols.

5. Trade union representatives

- Trade union representatives will be required to sign information confidentiality agreements as and when required. At the options appraisal and procurement proposal stages, any staff representative found to have failed to comply with the protocols will be excluded from the procurement process.
- At the procurement documentation stage refusal of a Trade Union to sign a nondisclosure agreement where one is required will result in withdrawal of the right to contribute to the documentation. Similarly, "leaking" of draft documents will result in immediate exclusion from the process.
- At the bidder/partner discussion stage, refusal of a Trade Union to sign a nondisclosure agreement where one is required will result in withdrawal of the right to review documentation and other information supplied by the external organisation. Breach of a previously signed non-disclosure agreement will result in the immediate suspension of the Trade Union from the process until such point as the specific source of the breach is identified.
- In all of the above cases where a Trade Union may have its original representative excluded from the process, a substitute acceptable both to the Council and to the Trade Union will be agreed as a matter of urgency.
- It is neither possible nor reasonable to attempt to prevent an independent Trade Union from making any contact with any external organisation, but if this

is not in accordance with the protocol it will be made clear to bidder/partner organisations that any such contact does not form part of the procurement process.

6. Procurement Documentation

The wording of documents has a significant influence on the shape and outcomes of the procurement process. It is important that potential bidders or partners are aware of the material issues that they may face in delivering the service; this of course includes workforce issues as one of the principal elements.

- Trade union representatives will be consulted and invited to comment on workforce proposals/wording in drafts of documents, although the final version and approval process will be the responsibility of officers and members.
- During the tendering or negotiation stages any decision on workforce exclusion from the services to be procured and consideration of the inclusion of requirements for mandatory variant bids or suggestions for optional variant bids will be explicitly documented to enable potential bidders to comment on the commercial structure of the service delivery.
- Given the sensitive nature of such documents as part of a legal process, it will be vital to ensure that their draft content is not divulged to anyone outside of the group responsible for the procurement until they are formally approved and published. Trade Unions must agree to this stipulation before being allowed access to the draft documents.
- Trade union representatives will be consulted and invited to make comment on the drafts of bid documentation in relation to workforce issues and working practices, so that potential bidders or partners can gain a full appreciation of the issues they may face in delivering the service in question. This opportunity will be subject to a non-disclosure agreement.
- Bid documentation must at this stage capture the conclusions of the procurement on workforce matters.
- Trade unions should be informed of the names of short-listed bidders.

7. Bidder/Partner Discussions

A positive and comprehensive staff contribution to relevant aspects of discussions with bidders or potential partner organisations is critical to ensuring that negotiations produce the most effective outcome for the Council. Equally, the bidder/partner organisations need to be confident that the information they disclose to the Council during discussions and negotiations will be treated with the appropriate level of confidentiality.

- Trade union representatives will be given the opportunity to participate in discussions with potential bidder or partner organisations when such discussions cover aspects of the procurement process directly affecting the employment of staff and changes to working practices.
- Trade union representatives will be given access to confidential information, directly relevant to the employment of staff and working practices, supplied by the bidder/partner organisations to the Council only with the specific consent of all bidders in the process. If consent is received from all bidders each trade

union represented in the procurement will be required to sign a confidentiality/non disclosure agreement before access to information will be allowed.

- Following receipt of information the trade union representatives will be expected to raise issues with the Council relating to terms and conditions of employment and working practices as stipulated in the Fair Employment Charter;
- Once potential bidder or partner organisations have been shortlisted to receive an ITN (or the equivalent stage of any procurement), trade union representatives will have access to discussions with those organisations, on an agreed agenda, where discussions cover issues relating to the employment of staff and working practices. This involvement will be subject to the agreement of the bidder or partner organisations.
- Trade union representatives will be allowed access to information supplied by bidder or partner organisations where this information relates to the employment of staff and where the trade union representatives and the relevant Trade Union have signed a non-disclosure agreement.
- Trade unions will be able to share procurement documentation and information with their appointed advisers who will also be able to attend meetings in an advisory capacity.

8. Evaluation Process

As noted above, the Council's decision-making processes focus on members acting on the advice of officers. Following the discussion and negotiation stage, the evaluation of the offers of competing bidder/partner organisations and of the preferred bidder will be carried out by officers, assisted by any formally approved external advisers. The evaluation criteria, including and extending the main criteria established for the options appraisal stage should include:

- Vision and innovation
- Service and community needs
- Equity, equalities and diversity
- Technical/design assessment
- Impact on service users
- Added value
- Financial assessment
- Development and investment
- Environmental sustainability
- Democratic accountability and participation
- Partnership
- Management practice
- Information and communications technology

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- Risk management
 - Asset management
 - Employment, training and human resource policies
 - Corporate impact on the authority
 - Community well-being and the local economy
 - Social and organisational impact
 - Regional strategies
 - To ensure that staff concerns are properly communicated to the evaluation body and taken into account in the evaluation process, trade union representatives will have the opportunity to make a presentation of their submission to the evaluation body.
 - Whilst the relevant Committee will provide a challenge to the evaluation process before accepting any evaluation report and recommendation consideration will be given to the possibility of including an independent observer agreed by the Council and bidder organisations on the evaluation body together with a similarly approved independent observer nominated by trade unions.

Trade union representatives will have the opportunity to make written submissions to the evaluation body for the procurement and to present those submissions to the evaluation body.

In line with the communications guidelines set out above, the evaluation body will reveal to trade union representatives the thinking behind the eventual recommendation and the ways in which staff concerns are dealt with and how they will be dealt with in the ensuing contract or partnership arrangement.

9. Options Appraisal – Staff Engagement

Many options could cause anxiety and uncertainty for staff and service users. Equally, every option within the Council's chosen framework must be properly considered, even if the end result is to dismiss it as a means of improving the service in question. For such consideration to be fully effective, the positive contribution of Service user organisations and community organisations, staff and trade union representatives must be an important element of the appraisal; this contribution must be obtained without causing unnecessary alarm to the users or staff of the service in question.

10. Staff and Trade union representatives

- Trade union representatives will be given the opportunity to contribute to and comment on the formulation of the options appraisal and the evaluation criteria. It will be important in coming to a proposal on the most advantageous option that workforce-related issues are fully understood and taken into account.
- During this process, information and the thinking behind it will be shared in confidence on the understanding that it will not be revealed more widely to staff of the service until a single preferred option has been identified; this is to avoid causing unnecessary uncertainty or anxiety over some of the more extreme options. Staff will be aware that options appraisal is under way as part of a well-communicated process.

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- Trade unions will be asked to make available information, which can only be accessed by them as part of the contribution to market analysis from relevant databases and research studies together with any factual information on the performance of providers. The validity of the information will require confirmation.
 - Trade union representatives will have the opportunity to comment on the draft options appraisal analysis.
 - Once the Council has finalised an appraisal of each option for future delivery of the service, trade union representatives will again be consulted on the outputs and will be fully briefed on the reasons for the proposed preferred option. The options will be discussed in as much detail as is appropriate to their realistic application to the service, and the views of trade union representatives will be considered in the final proposal of preferred option.
 - Where any option other than continued in-house provision is preferred, the Council will seek to procure the service from the widest possible scope of potential service providers. In order to maintain the credibility and business-like reputation necessary to attract a wide spectrum of interest, there will be no communication outside of the Council until the relevant Committee has sanctioned any release of information.
 - The preferred option will not be communicated outside the Council until the relevant Committee has sanctioned any release of information so that the scope of potential sources of service delivery is not unnecessarily reduced.

11. Communicating with staff

As soon as a preferred option has been identified, with the views of trade union representatives taken into account, this option and its implications will be communicated and fully explained to all staff potentially affected. This will include the implications and intended process fully explained. This will be done via the most effective channels of communication, which will usually involve a major face to face element. To avoid or reduce concerns and rumours there will be no undue delay in communication

The nature of the communication process will depend on the preferred option and ideally, the communication will be jointly by management and trade union representatives, even where there is disagreement on the conclusion as to preferred option.

Communications in such circumstances will follow the guidelines recently issued by Organisational Development:

- establish the message to the employees affected, that is the vision, reasons for change, benefits, impact on employees, timescale and end results;
- minimize uncertainty by explaining a clear process and timescale;
- identify the concerns that employees will have and be clear about the assurances that can be given - manage expectations carefully;
- if issues remain unclear explain when they will be resolved and follow that up without fail;
- keep the flow of information going with further face to face briefings;

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- ensure that employee representatives are well briefed and respond fully to concerns that are raised by them without delay;
 - consider planning a series of communications to the workforce as a whole to raise awareness and influence opinion.

12. In-house Options

Discussions will be held with trade union representatives on the approach, development and overall content of any In-House Option at the start of the procurement exercise.

- Trade union representatives will be consulted on the principles and approach of the in-house option including any proposed changes to working practices.
- Consultation will also include the active participation of staff and trade union representatives in the preparation of Service Improvement Plans to harness staff ideas for innovation and service development.
- Trade union representatives will be consulted on the selection of advisers to assist with the preparation of an in-house option.

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Appendix 18

Policy for User and Community Engagement

1. Overview

This policy explains our principles for community participation. It sets out how we will involve service users and community representatives at all stages of the procurement process.

2. Policy

Community participation should be planned to ensure:

- A clear purpose
- The process is as important as the outcome
- Communities need to be involved sooner rather than later
- Coordination to avoid duplication
- Commitment from the top
- Social inclusion
- Partnership with other agencies
- Positive action
- Evaluation to ensure it is working

User/community representatives should be involved at key stages of the procurement process. User/community representatives should be consulted on the overall proposals for:

- the definition of service need
- the performance standards, targets and other key aspects of the service;
- the equalities and environmental sustainability requirements to be included in the contract;
- the monitoring arrangements;
- the evaluation criteria and methodology.

User/community representatives should be informed of the names of shortlisted bidders if requested.

3. Monitoring

Service providers who have direct contact with service users will be required, if requested, to meet with resident/tenant representatives on-site and/or to attend community meetings to discuss operational matters and performance.

4. Failing contracts

Representations in regard to failing contracts will be initially through the appropriate Council officer authorised representative together with appropriate reporting structures within the Council itself.

5. Resident/tenant involvement in regeneration projects

Procurement is a key part of regeneration projects. It will usually include the procurement of a developer and/or builder, consultants and the provision of services, employment and training and other community projects.

Resident/tenant and community representatives will be involved in Advisory panels, Boards and other coordinating bodies, which will usually predate options appraisal and procurement processes. Where coordinating bodies have not been established or are being established in parallel with options appraisal and procurement, user/tenant and community representatives will be involved in these processes.

Resident/tenants and community organisation representatives should be involved in the following ways:

- Each procurement process must immediately prepare a draft user/community involvement/consultation plan identifying the different stages of the procurement process and how user/community representatives will be involved. Discussions should be held with the relevant organisations to agree the level of involvement at each stage.
- The user/community involvement/consultation plan will provide for participation through:
 - Working groups, panels and committees set up to carry out options appraisal and procurement
 - Evaluation panels
 - Site visits to other projects and contracts.
 - Interviews of contractors prior to shortlisting and on bid submissions:
 - Presentations by bidders
 - Workshops and away days to evaluate proposals and bids
 - Engagement of consultants and advisers
- Community and/or trade union representatives will have observer status on decision-making bodies because they are not party to the contract. However, this does prevent representatives having a role in working groups and panels established to progress procurement.
- Consultative evaluation of appropriate elements of scoping documents, options, specifications, procurement strategy, shortlisting, bid documentation, bids, preferred bidder selection and contract award.
- Resident/tenant and community groups have the right to have their advisers to accompany them to all meetings with Elected Members, council staff, consultants and contractors and to submit reports and their views to evaluation panels.
- The Council will provide training for resident/tenant and community representatives on the options and procurement processes.
- The Council will consider funding technical advisers for community organisations, in appropriate procurements.

Contracts will include specific requirements negotiated with the service provider as part of this process.

6. Options Appraisal

- Service user organisations and community organisations will be involved in the options appraisal process in connection with key services and regeneration projects where their involvement is an essential part of the public policy making process.
- User/community organisations and trade union representatives will also be consulted if any 'deconstruction' of a service is under examination for outsourcing or market testing purposes in order to assess the detailed implications.

7. In-house Options

Service users and community organisations will be consulted in the preparation of the bid or project for direct service provision where user needs and views are important.

Community organisations and service user representatives will be encouraged to participate in the preparation of the Service Improvement Plan to ensure it reflects their needs, ideas and experiences.

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