

Contract Procedure Rules (DRAFT)

1005th September 2014

Function	Consultation	Date
Commercial Director and Team (Resources)	All	Throughout
Finance (Resources)	Dave Roberts Jessie Mann Jo Frost Donna Edwards Steve Tingle Cliff Parker Hasina Shah	29 April 2014 19 Feb 2014 28 April 2014 04 April 2014 Throughout 07 April 2014
Legal	Stephen Dorrian and team	19. March 2014 09 April 2014 21 August 2014
C&F	Richard Selwyn	28 April 2014
CHWB	Chris Greenway Tim Miller Brian Jones	06 May 2014 06 May 2014 16 May 2014
Housing	Paul Mullins Maggie Challoner Mark Billington	06 May 2014 08 May 2014 22nd May & 04 Sep 2014
Audit	Susan Dixon	29 April 2014
	Mala Kriplani	15 April 2014
Equalities	Mohammed Ilyas	30 April 2014
Boards	SPB Ops Board CSB Housing DCB SDB	24 Feb 2014 14 May and 20 Aug 03 Sep 2014 08 & 20 May 2014 03 Sep 2014
Clearance	Finance Legal	02 Sep 2014 02, & 5 & 10 Sep 2014
	Governance, Audit and Risk Management Committee (GARM)	17 Sep 2014
	Constitution Working Group	TBA
	Full Council Meeting	TBA

TABLE OF CONTENTS	Page
Table 1 – Authorisation and Acceptance Thresholds	3
1. Preamble	8
2. Introduction	8
3. Application	9
4. Scope	10
5. Roles and Responsibilities	11
6. Authorisation	12
7. Procurement Method	14
8. Information Governance	14
9. Acceptance	15
10. Contract Signing and Sealing	15
11. Contract Management	16
12. Extensions and Variations	16
13. Waivers	17
Glossary of Definitions	18

Table 1: Authorisation and Acceptance Thresholds

Total Spend/ Aggregate Contract Value	Procurement Process	Documentation Required	Authorisation under Scheme of Delegation
Low Value – non repeatablecurring spend (up to £500)	P Cards should be used In accordance with the P-Card Policy. Petty cash or cheque, In accordance with the petty cash and cheque policy. (Upper limit for petty cash is £250)	Receipts to be kept as evidence of purchase	N/A
Request for Quotation:			
£0 - £24,999	Minimum 1 quotation required and should be sought from a local business*.	Quotation must be attached to the shopping carts in SAP. FWi – manual copies of quotations/ contracts are kept on file.	Grade 9 – Grade 11
£25,000 - £49,999	Requirement must be advertised and tendered via the London Tenders Portal. Minimum 3 quotations required, at least 1 quotation should be sought from a local business.	Quotations must be attached to shopping carts in SAP with reference to the London Tenders contract reference number. FWi – manual copies of quotations/ contracts are to be kept on file. Contract not required, but if requested templates are available. As a minimum the Council's standard Terms and Conditions of Contract must be issued with the Purchase Order.	Management Grade
Tender Process:			
£50,000 - £99,999	Procurement must be consulted. Requirement must be advertised and tendered via the London Tenders Portal. Minimum 3 Tenders required, at least 1 Tender should be sought from a local business.	Contract signed by both Harrow Council & the supplier.	Director Grade

Comment [SD]: Why would we not want a contract for say the purchase of services valued at £40k?

Total Spend/ Aggregate Contract Value	Procurement Process	Documentation Required	Authorisation under Scheme of Delegation
--	----------------------------	-------------------------------	---

DRAFT

Total Spend/ Aggregate Contract Value	Procurement Process	Documentation Required	Authorisation under Scheme of Delegation
Tender Process:			
£100,000 - £249,999 £500,000 (key decisions) and above	Procurement in the Directorate Procurement Board prior to any tender activity. Portfolio Holder must be consulted. Requirement must be advertised and tendered via the London Tenders Portal. Values above £170,000 requires OJEU advertising (if applicable) in compliance with Public Contracts Regulations. Approval to award must be obtained from approved by the Strategic Procurement Board prior to any tender activity.	approved by the Directorate Procurement Board prior to seeking authorisation under the Scheme of Delegation.) Must be recorded on the Forward Plan OJEU Advert (if applicable) Cabinet Report– Seeking mandate to procure – requires approval by the Strategic Procurement Board prior to cabinet submission. OJEU Contract Notice and Contract aAward nNotice (if applicable)	Corporate Director Grade Or Monitoring Officer Cabinet Approval
	Procurement over £170,000 requires OJEU advertising (if applicable) in compliance with Public Contracts Regulations.	OJEU Contract Notice and Contract aAward nNotice (if applicable) Contract/s must be sealed by the Director of Legal & Governance Services.	Head of Paid Services Or
*To find local businesses in Harrow, you could use the following link to access the Harrow Business Directory http://250.000.harrow.gov.uk	Requirement must be advertised and formally tendered via the London Tenders Portal.	OJEU Advert (if applicable) Procurement Gateway 2– Award Report	Head of Paid Services Or
	Procurement over £170,000 requires OJEU advertising (if applicable) in compliance with Public Contracts Regulations. Approval to award must be obtained from approved by the Directorate Procurement Board prior to award of the contract.	OJEU Contract Notice and Contract aAward nNotice (if applicable) Contract/s must be sealed by the Director of Legal & Governance Services.	Chief Financial Officer

Comment [SD]: What about waivers for contracts over the OJEU threshold?!

Table 2: Waiver Approval Process

Waiver Value	Documents required for waiver approval	Waiver approval
£25,000 up to £99,999	Please complete the online waiver form which can be accessed via the hub. Please see link below: http://harrowhub.harrow.gov.uk/info/200194/procurement/853/authorisation_forms/2	1) Divisional Director; and 2) Procurement Commercial Business Partner;
Over £100,000 up to EU Threshold	Gateway Two report to be completed and submitted to the Strategic Procurement Board	1) Portfolio Holder Portfolio Holder for Finance and Major Contracts 2) SPB sign off, and 3) Corporate Director;
Please note: Where a waiver is necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services, a corporate director may authorise the recommendations of the waiver immediately. Where a Gateway two report is required this should subsequently be submitted to the relevant procurement board for noting.		

Key Requirements:

- No commitment should be given to a supplier for goods or services prior to a purchase order being raised. Please see 5.10 of these CPRs.
- Financial disaggregation of Total Procurement Value, in order to avoid entering a new threshold is prohibited.
- All contracts, whether income or expenditure should be captured on the Councils Contracts Register as required by the Transparency Code.
- EQIAs must be carried out where there could be significant equalities implications.
- For the Procurement of Care Spot Placements: Community Health & Wellbeing and Children & Families Directorates please see 6.8 of these CPRs.

Link to EU regulations for threshold values:

<http://www.ojec.com/thresholds.aspx>

Contract Variation or extension Acceptance**Extensions and Variations****Values below EU Threshold**

- If no significant change in scope and costs are within 10% of contract value - extend with relevant Budget Holder approval
- If costs are above 10% - a waiver will be required.

OJEU Level

- If no significant change in scope and costs are within 10% of contract value - extend with relevant Budget Holder approval & Commercial Business Partner.
- If costs are above 10% [seek advice from Commercial Business Partner and Legal](#) because ~~a new~~ there may be a legal requirement ~~needs to be advertised again~~ to the market. ~~(Cannot waiver above EU values).~~

1 PREAMBLE

- 1.1 The Council's Contract Procedures Rules are designed to ensure that stewardship and probity are maintained within the Council and that Approved Officers obtain Best Value services and Value for Money from purchasing arrangements.
- 1.2 These Contract Procedure Rules should be read in conjunction with the Council's Financial Regulations which set out mandatory financial procedures to be followed. These can be found by following the link below.
http://harrowhub/downloads/file/6581/financial_procedure_rules-april_2013
- 1.3 These Contract Procedure Rules are designed to ensure compliance with the Council Constitution, Council policy, Public Procurement Regulations and English law.
- 1.4 The Contract Procedure Rules are supported by the Procurement Guide that sets out in greater practical detail how to undertake best practice procurement.
- 1.5 Table 1 and 2 at the beginning of this document sets out in summary the key requirements that must be adhered to. However, you are strongly advised to refer to the rest of this document for further guidance and to seek the advice and support of the Commercial, Contracts and Procurement Division.

2 INTRODUCTION

- 2.1 The Council is responsible for spending substantial public funds and other assets and has a duty to demonstrate high standards of probity and stewardship in the day to day management of its affairs.
- 2.2 The Council purchases works, goods and services from the private, independent and third sector as well as other public bodies. The process of identifying what and why we buy, how much we buy, from whom and at what price is extremely important and we have a duty to ensure this process is underpinned by the requirements of the Public Procurement Regulations which include equality of treatment, transparency and non-discrimination. Commissioning and procurement decisions are amongst the most important the Council makes because we are spending public money and therefore are publically accountable.
- 2.3 The Council has a responsibility to ensure that, as a minimum, supplies, works and services are of good quality and are competitively but sustainably priced.
- 2.4 Effective, efficient and economic use of resources in order to achieve Best Value is a statutory duty. In working to achieve Best Value, the Council must consider overall value, including **economic, environmental and social value**. This requirement is embodied in the Public Services (Social Value) Act 2012.
- 2.5 The Council must at all times act with integrity and comply with statutory requirements. Council officers must at all times act transparently and avoid acting in an unfair, corrupt or dishonest way.

- 2.6 If officers fail to comply with these Contract Procedure Rules, which lay down minimum mandatory requirements when engaging in procurement activity, disciplinary action may be considered.
- 2.7 Members and Council employees have a duty to report breaches of Contract Procedure Rules to an appropriate senior manager and the Director of Commercial, Contracts and Procurement.
- 2.8 [Unless the context otherwise requires, terms used in these Contract Procedure Rules have the meanings set out in the Definitions section.](#)

3

3 APPLICATION

- 3.1 The Contract Procedure Rules provide the governance structure within which the Council may procure works, supplies and services. The aims of these Contract Procedure Rules are to ensure:
 - 3.1.1 Commitment to the principles of transparency, fairness and equal treatment within the procurement process;
 - 3.1.2 Value for money and propriety in the spending of public money;
 - 3.1.3 That works, supplies and services are delivered effectively and efficiently without compromising the Council's ability to take strategic decisions;
 - 3.1.4 That the Council is not exposed to unnecessary risk or challenge arising from non-compliant procurement activity;
 - 3.1.5 Compliance with legislation, and relevant guidance including Procurement Policy Notes issued by the Cabinet Office; and
 - 3.1.6 The delivery of economic, environmental and social value through procurement.
- 3.2 The Constitution Working Group (CWG) may, from time to time, recommend to Cabinet changes to the financial thresholds set out in these Contract Procedure Rules.
- 3.3 The Director Commercial, Contracts and Procurement is permitted to undertake an annual refresh to this document without having to seek CWG and Cabinet approval. These include any changes required as a result of a change in law and all non material changes. The Director Commercial, Contracts and Procurement must do this in consultation with the Director of Legal and Governance Services, the Portfolio Holder for Finance and Major Contracts and inform the Corporate Strategic Board (CSB) of these changes including what impact they have on the Council.
- 3.4 The Director Commercial, Contracts and Procurement in consultation with the Corporate Director of Resources shall maintain and issue the Contract Procedure Rules and the Procurement Guide. The Contract Procedure Rules take precedence over the Procurement Guide.

- 3.5 All procurement activity needs to adhere to the Scheme of Delegation as set out in the Financial Regulations.
- 3.6 The Procurement Guide provides a more detailed explanation of procurement best practice, procedures, processes, associated Council policies and required contract terms.
- 3.7 All officers must undertake Procurement in a manner which avoids any potential conflicts of interest and must follow the appropriate procedure for declaring interests as set out in the 'Code of Conduct for Council Employees' ~~unless the context otherwise requires, terms used in these Contract Procedure Rules have the meanings ascribed to them in the Definitions section.~~
- 3.8 Where there is inconsistency between these Contract Procedure Rules and the Financial Regulations, the latter take precedence. Please report any inconsistencies in writing to the Director of Finance and Assurance and the Director of Commercial, Contracts and Procurement.

4 SCOPE

- 4.1 The Contract Procedure Rules apply to all procurement activities, including the receipt of income or where funding, such as grant allocation, is received by the Council from external sources.
- 4.2 Where the Council is entering into a contract as an agent and/or in collaboration with another public body or organisation, these Contract Procedure Rules apply only in so far as they are consistent with the requirements of the organisation with whom we are collaborating. Where the Council is acting as principal the Contract Procedure Rules will take precedence.
- 4.3 The Scheme for Financing Schools 2013 requires schools to comply with these Contract Procedure Rules.
- 4.4 Framework agreements that have been established by other public sector bodies that are lawfully accessible to the Council should be used in accordance with the terms and conditions of the relevant framework agreement.
- 4.5 The following are ~~Out of scope~~ ~~to~~ ~~of~~ the Contract Procedure Rules ~~as follows~~:
 - 4.5.1 The instruction of Counsel
 - 4.5.2 Social Care Spot Placement (see section 6.8)
 - 4.5.3 Any purchase or sale of a property, interest in land, transaction in land and or lease transaction is excluded from the Contract Procedure Rules but must be authorised in accordance with the requirements set out in the Constitution and, specifically, the Management of Asset, Property and Land Rules.
 - 4.5.4 Procurement of Services from other public bodies where it can be evidenced that the body is the only supplier of the good or service.

5 ROLES AND RESPONSIBILITIES

Each Corporate Director with the support of the Director of Commercial, Contracts and Procurement is accountable for all procurement activity in their respective directorates. Their duties are to:

- 5.1 Ensure compliance with the Public Procurement Regulations, Council policy, Contract Procedure Rules, Financial Regulations and the Procurement Guide;
- 5.2 Ensure compliance with the Code of Recommended Practice for Local Authorities on Data Transparency issued by the Department for Communities and Local Government.
- 5.3 Ensure the use of compliant best practice procurement for their directorate's procurement activity;
- 5.4 Ensure that no procurement over the required threshold (see Table 1) commences without the approval of a Procurement Gateway One report at the appropriate Procurement Board. A Cabinet report is required for all procurements over £500,000 or where the procurement is defined as a key decision. A Gateway One report does not need to be written where a Cabinet report is required. However, all Cabinet reports must be approved by the Strategic Procurement Board as part of their journey to Cabinet approval.
- 5.5 Ensure that no commitment to enter into a contract with a third party over the required threshold (See Table 1) is made without a Procurement Gateway Two Award report having been approved at the appropriate Procurement Board and having been signed off under the Scheme of Delegation. A Cabinet report is required for all procurement over £500,000 or where the procurement is defined as a key decision. A Gateway Two award report does not need to be written where approval of an award is required from Cabinet. However, all Cabinet reports must be approved by the Strategic Procurement Board as part of their journey to Cabinet approval.
- 5.6 Ensure that work carried out or supplies and services delivered or provided by third parties for the Council are approved and covered by a suitable Council terms and conditions of contract so that the responsibilities of each party are clear. If it is deemed necessary to sign up to third party terms and conditions of contract the prior approval of the Director of Commercial, Contracts and Procurement must be received in writing. Legal advice should be sought from HB Public Law on all legally binding contracts entered into by the Council.
- 5.7 Ensure that contract terms and conditions to be used in a procurement have been approved by the Director of Legal and Governance Services;
- 5.8 Use their best endeavours to ensure that no contract commences prior to the terms and conditions of contract being signed and, where necessary, sealed;

- 5.9 Ensure that ~~for~~ all key decisions as defined in Article 13 of the Constitution are recorded on the Council's Forward Plan
- 5.10 It is mandatory under section D42 of the Financial Regulations to raise Purchase Orders on the Corporate Financial System prior to procuring goods and services, unless an exemption is approved by the Director of Finance and Assurance;
- 5.11 Ensure that all contracts are awarded on the basis of the *most economically advantageous tender (MEAT)*. Social and environmental criteria must be used as part of the assessment process, to the extent that they relate proportionately to the subject matter of the contract and are non-discriminatory;
- 5.12 Identify, evaluate, record and appropriately mitigate risk (e.g. provision of performance bond, parent company guarantee and appropriate payment provisions and termination clauses within contracts);
- 5.13 Ensure that all Invitation to Tender documents clearly describe the evaluation criteria, sub criteria and weighting and that the tender evaluation process strictly follows the published criteria and weighting.
- 5.14 Ensure that evaluation criteria require the bidder to state how they will meet social value considerations (i.e. employment, training, apprenticeships, use of SME's and local suppliers).
- 5.15 Ensure immediate corrective action is taken in the event of a breach of the Contract Procedure Rules;
- 5.16 Ensure that their Directorate supports and facilitates the work of the Commercial Business Partner to complete the Three Year Procurement Plan template which includes all commissioning intentions and planned procurement activity and that this plan is refreshed on an annual basis.
- 5.17 The use of the FB60 method of payment must be consistent with the guidance set out by the unsupported payments procedure notes within the fFinancial regulations.
- 5.18 Contracts must not be artificially underestimated or disaggregated into two or more separate contracts where the intent is to avoid the application of the Contract Procedure Rules or Public Procurement Regulations.

6 AUTHORISATION

- 6.1 All procurement activities over the OJEU thresholds require the full engagement of the Commercial, Contracts and Procurement team in consultation with the Legal team.
- 6.2 Financial, Procurement, Legal and, where appropriate, ICT clearance must be obtained within reports prior to them being submitted to Procurement Boards or Cabinet.

- 6.3 A Procurement Gateway One report or Cabinet report (see Table 1) for commencement of a Procurement activity must be presented and approved by the respective Procurement Board and Cabinet.
- 6.4 A Procurement Gateway Two report or Cabinet report (see Table 1) for contract award must be presented to and approved by the respective Procurement Board and Cabinet.
- 6.5 Any procurement must be authorised in accordance with the Scheme of Delegation as published within the Financial Regulations.
http://harrowhub/downloads/file/6581/financial_procedure_rules-April_2013
- 6.6 All Procurement Officers must consider whether it is appropriate to complete an Equalities Impact Assessment. Please refer to the 'Equality in Procurement and Commissioning, A guide for Council Officers' document.
- 6.7 A partnership arrangement must not be used as a means of avoiding the Contract Procedure Rules or Public Procurement Regulations. All new partnership arrangements are required to be reported as required by section E7 of the Financial Regulations. This clause is not applicable to the award of grant payments.
- 6.8 Procurement of Care Spot Placements: Community Health & Wellbeing and Children's Directorates:
 - 6.8.1 Procurement of care spot placements – (i.e. individual placements that fall outside of any block contracting arrangements) do not require approval from the Strategic Procurement Board.
 - 6.8.2 A general waiver is granted so that there is no need to tender such requirements acknowledging at all times that the Council has a duty to achieve best value in making such placements.
 - 6.8.3 The Corporate Directors of Community Health & Wellbeing and Children's Services must have in place a process that requires the approval of a Head of Service or a more senior Council officer for all new placements where the annual value of a placement is likely to exceed £ 62,500.
 - 6.8.4 All new placements where the annual value is likely to exceed £125,000 require the approval of the relevant Statutory Director.
 - 6.8.5 All new placements where the annual value exceeds £250,000 require the above approvals of the relevant Statutory Director and the Portfolio Holder for the respective department must be consulted.
 - 6.8.6 The Corporate Directors of Community Health & Well Being and Children's Services must, as a minimum, annually review all care placements (existing and new) in order to continue to demonstrate value for money and best value. A report will be required to be presented to the Strategic Procurement Board on the review.

7 PROCUREMENT METHOD

- 7.1 The default position in acquiring works, goods and services should always be open competition through competitive tendering. Please refer to Table 1 of these Contract Procedure Rules to determine the procurement process that should be used. The Commercial, Contracts and Procurement Team should be involved and engaged on the procurement strategy/approach to be adopted for all purchases over £100,000. Similarly the Economic Development Team must be consulted on promoting opportunities to local companies through Business Newsletters and Supplier Events.
- 7.2 All tender opportunities for works or services over £25,000 must be advertised openly and in accordance with Table 1 and are subject to review as set out in the Procurement Guide.
- 7.3 The E-Procurement portal must be used for any procurement where the lifetime value of the contract exceeds £50,000. To be consistent with the transparency code and best practice procurement, the Contract Procedure Rules strongly recommend the use of the E-Procurement portal when sourcing/advertising your requirement for values above £25,000.
- 7.4 The Director of Commercial, Contracts and Procurement must approve accessing externally established Framework Agreements. Approval for subsequent call-offs from the approved framework will be as per the procurement requirements of these Contract Procedure Rules.

8 INFORMATION GOVERNANCE

- 8.1 When procuring, the responsible Council officer must ensure due diligence checks are carried out to provide sufficient guarantees that the contractor's technical and organisational security measures for handling and protecting information and data are appropriate, suitable and lawful. This is a requirement under Principle 7 of the Data Protection Act.
- 8.2 Evidence of these checks, copies of policies and guarantees provided by the contractor must be retained by the Council officer responsible for management of the contract and be regularly reviewed throughout the life of the contract.
- 8.3 Refer to the Procurement Guide section on Information Governance for more detailed guidance or contact the Information Management Team.
- 8.4 Contract managers must ensure appropriate security measures are applied to prevent the unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

9 ACCEPTANCE

- 9.1 Awarding and entering into contractual arrangements for values above £50,000 is subject to:
- 9.1.1 Confirmation of budgetary provision;
 - 9.1.2 Confirmation of acceptable financial status of the service provider; and
 - 9.1.3 The Council's Terms and Conditions of Contract being signed for values over £50,000 and sealed for all contracts over £100,000 prior to commencement of contract. Legal input from HB Public Law should be sought on such contracts.
- 9.2 Awarding and entering into contractual arrangements for values above £100,000 is subject to:
- 9.2.1 A Procurement Gateway One and Procurement Gateway Two report approved by the relevant Procurement Board and the Scheme of Delegation (as per sections F3/F4 of the Financial Regulations). For key decisions Cabinet approval is required as per Table 1.
 - 9.2.2 The requirement of 10.2 being met.
- 9.3 Acceptance thresholds for contract extensions and variations of all values are subject to further conditions as set out in Section 12 (Extensions and Variations) of these Contract Procedure Rules.

10 CONTRACT SIGNING and SEALING

- 10.1 Every contract or contract novation must be in a form approved by the Director of Legal and Governance Services or delegated officer, if its value exceeds £50,000 or where it is appropriate to do so due to the nature of the contract.
- 10.2 Contracts with a lifetime value greater than £100,000 must be sealed on behalf of the Council, unless the [Head Director](#) of Legal and Governance [Services](#) or delegated officer directs otherwise. Legal input from HB Public Law should be sought on such contracts.
- 10.3 Framework Agreements entered into with respect to the provision of social care to individual service users do not require sealing and need only to be signed by the respective Director of Social Care or their nominated representative.
- 10.4 In the circumstances where a Court or Tribunal directs a particular placement, it must be sealed.
- 10.5 Where the Director of Legal and Governance Services or delegated officer considers it desirable that a contract should be sealed other than as specified above, then such a contract must be sealed.

10.6 All contracts should have a clear start and end date.

11 CONTRACT MANAGEMENT

11.1 During the life of the contract, Corporate Directors, Divisional Directors and Lead Commissioners must ensure that the Council's approved processes for contract management, as set out in the Contract Management Procedures are followed.

12 EXTENSIONS and VARIATIONS

12.1 Contracts may only be extended or varied if all of the following conditions have been met:

- 12.1.1 ~~12.2~~—The original contract was awarded on a Contract Procedure Rules compliant competitive tender or quotation process and has the ability to extend without seeking further approval.
 - 12.1.2 Commissioners must be able to demonstrate that exercising any extension options represent continued value for money and/or is in the best interest of the Council.
 - 12.1.3 The value of the extension or variation added to the total value of the original contract does not exceed 10% of the original financial value approved in the award report or contravene the Scheme of Delegation as defined in Table 1.
 - 12.1.4 Contract value means the actual / or accurately estimated aggregate or recurring value exclusive of Value Added Tax over the entire contract period including any extension options in the contract.
 - 12.1.5 Where a Framework Agreement is planned the contract value must be calculated to include the total value of all the individual contracts arrangements envisaged under the Framework Agreement.
 - 12.1.6 The extension or variation has an approved budget allocation.
 - 12.1.7 The extension or variation is in accordance with the terms and conditions of the existing contract. Legal input from HB Public Law should be sought to confirm this is the case.
 - 12.1.8 If the initial contract was subject to the EU tender procedure, that the extension option was declared within the OJEU notice.
 - 12.1.9 The contract has not been extended beyond the approved extension period.
 - 12.1.10 In the event that any of the conditions at 12.1 to 12.10 cannot be met, then either a waiver must be sought in accordance with Section 13 (Waivers) or a new procurement commenced.
 - 12.1.11 Where a variation or extension moves the total value of the Contract into a higher threshold as shown in Table 1, then either a waiver must be sought in accordance with Section 13 (Waivers) or a new procurement commenced.
 - 12.1.12 Note that it is only possible to vary a Part A Procurement contract which was originally subject to the Public Procurement Regulations in limited circumstances

(including where the variation or extension option was clearly set out in the original OJEU notice). Seek advice from the Commercial Business Partner and Legal in these cases.

- 12.1.13 ~~The acceptance thresholds for contract extensions and variations are set out in Table 1 of these Contract Procurement Rules.~~
- 12.3 ~~Commissioners must be able to demonstrate that exercising any extension options represent continued value for money and/or is in the best interest of the Council.~~
- 12.4 ~~The value of the extension or variation added to the total value of the original contract does not exceed 10% of the original financial value approved in the award report or contravene the Scheme of Delegation as defined in Table 1.~~
- 12.5 ~~Contract value means the actual / or accurately estimated aggregate or recurring value exclusive of Value Added Tax over the entire contract period including any extension options in the contract.~~
- 12.6 ~~Where a Framework Agreement is planned the contract value must be calculated to include the total value of all the individual contracts arrangements envisaged under the Framework Agreement.~~
- 12.7 ~~The extension or variation has an approved budget allocation.~~
- 12.8 ~~The extension or variation is in accordance with the terms and conditions of the existing contract. Legal input from HB Public Law should be sought to confirm this is the case.~~
- 12.9 ~~If the initial contract was subject to the EU tender procedure, that the extension option was declared within the OJEU notice.~~
- 12.10 ~~The contract has not been extended beyond the approved extension period.~~
- 12.11 ~~In the event that any of the conditions at 12.1 to 12.10 cannot be met, then either a waiver must be sought in accordance with Section 13 (Waivers) or a new procurement commenced.~~
- 12.12 ~~Where a variation or extension moves the total value of the Contract into a higher threshold as shown in Table 1, then either a waiver must be sought in accordance with Section 13 (Waivers) or a new procurement commenced.~~
- 12.13 ~~Any variation or extension that has the effect of raising the contract value above the relevant OJEU threshold is not allowed as this would contravene Public Procurement Regulations (EU Regulations) and/or English Law. Note that it is only possible to vary a Part A Procurement contract which was originally subject to the Public Procurement Regulations in limited circumstances (including where the variation or extension option was clearly set out in the original OJEU notice). Seek advice from the Commercial Business Partner and Legal in these cases.~~
- 12.14 ~~The acceptance thresholds for contract extensions and variations are set out in Table 1 of these Contract Procurement Rules.~~

Comment [SD]: This is not right!

13 WAIVERS

- 13.1 Circumstances may arise where permission is required to waive one or more of the Contract Procedure Rules. Waivers are reserved for exceptional circumstances and will only be approved where good and sufficient reason has been demonstrated. A waiver will not be granted simply on the grounds of convenience or because of inadequate forward planning. The Council can only waive the rules established by the Council – the Council cannot waive UK law and European Procurement Directives.
- 13.2 All waivers must be approved as per Table 2: Waiver Approval Process.
- 13.3 Waivers to any of the Council's rules must be sought in advance of any contractual agreement, order placement, use of service or purchase of goods.
- 13.4 A Procurement Gateway Two report must be submitted for approval for waivers above £100,000 up to the EU threshold.
- 13.5 Procurement of spot care placements – (i.e. individual placements that fall outside of any block contracting arrangements) are excluded from the requirement to have to be approved through the Strategic Procurement Board. A general waiver is granted so that there is no need to tender such requirements acknowledging at all times that the Council has a duty to achieve best value in making such placements.

No waiver can be submitted for a value above the OJEU limit.

13.76 Any waiver can only be granted for a maximum period of 12 months unless it can be demonstrated that any longer period is in the best interest of the Council.

13.7 Normally the circumstances under which a waiver can be agreed are:

- a. **Sole Supplier:** It can be proven that there is only one provider who can deliver the products or services. (It is considered better practice to issue a tender to evidence that there is only supplier.)
- b. **Demonstrable Best Interest:** It can be demonstrated that it is in the Council's best interest and this is clearly demonstrated in the waiver report.
- c. **Emergency:** There is a clear need to provide a service or a product immediately in the instance of a sudden unforeseen crisis; the immediate risk is to health, life, property or environment.
- d. **Service Imperative:** Demonstrable circumstance that is exceptional.
- e. **Extension as a Waiver:** Where an extension to a contract is being sought but it is not possible under the current terms and conditions of the contract.

Comment [SD]: ??

GLOSSARY OF DEFINITIONS

Term	Definition
Acceptance	The authorisation to enter into a contract with a particular supplier(s) on the terms, conditions and at the price(s) as set out in the contract documents.
Agent	A supplier, or consultant employed to act on behalf of the Council.
Approved Officer	The Corporate Director, Divisional Director, Service Lead or Lead Commissioner Officer who has responsibility for all contracts tendered and let by their Directorate including contract monitoring and management once the contract is in place.
Authorisation	The approval required to enable any Procurement to commence or any contract to be awarded.
Best Value	The duty on local authorities to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council.
Bond	A performance bond issued by a bank or insurance company to guarantee satisfactory contract compliance.
Budget	All the financial resources allocated to different services and projects.
Cabinet	The Councillors who, together with the leader, form the executive
Cabinet Report	A report that is required to be submitted to Cabinet.
Call Off Contract	An enabling agreement with one or more suppliers for a defined range of works, goods or services covering terms and conditions (including price) which users "call off" to meet their requirements

Term	Definition
Central Purchasing Body	A Central Purchasing Body (CPB) is a contracting authority which acquires goods or services intended for one or more contracting authorities. It awards public contracts intended for one or more contracting authorities or concludes framework agreements for works, goods or services intended for one or more contracting authorities.
Chief Financial Officer	Also known as the “Section 151 Officer”. The officer responsible for the administration of the financial affairs of the Council. This is a statutory ‘proper officer’ role.
Code of Conduct for Council Employee	The Council’s published guidance on standards of conduct for Council employees.
Commercial Business Partner	The officer in the Commercial, Contracts & Procurement Division that has responsibility to provide expert support and guidance to the Council.
Commercial, Contracts & Procurement Division.	The team that provides expert Commercial and Procurement support to the Council.
Commercial Strategy	The document that sets out the commercial and procurement priorities of the Council.
Competitive Tendering	Awarding of contracts by the process of inviting competing tenders.
Constitution	A document setting out how the Council operates, how decisions are made and all the procedures that have to be followed.
Contract	A formal written agreement, which is enforceable by law between the Council and the provider of any goods, services or works.
Contract Novation	The substitution of a new contract for an old one. The new agreement extinguishes the rights and obligations that were in effect under the old agreement.

Term	Definition
Contract Procedure Rules (CPRs)	The rules required in accordance with section 135 of the Local Government Act 1972.
Contracts Register	The record of all Council contracts maintained by the Director of Commercial, Contracts and Procurement.
Corporate Directors	The officers in charge of the Council Directorates.
Directorate Procurement Board	The group of officers who meet regularly in each Directorate to consider and approve procurement gateway reports within their directorates.
Due Diligence	<p>A process of acquiring objective and reliable information, generally on a person or a company, prior to making any decisions.</p> <p>A systematic research effort, which is used to gather the critical facts and descriptive information which are most relevant to the making of an informed decision on a matter of importance.</p>
Electronic Procurement Portal	The Council's electronic system for conducting procurement activity.
EU Procurement Regulations	2014 EU Procurement Directives. Adopted by the EU institutions and were published in the Official Journal of the EU on 28 March 2014. They came into force on 17 April 2014. EU member states now have 2 years to implement them in national legislation.
EU Threshold	The financial threshold above which the EU public procurement directives must be applied if expected to be exceeded by the total value .

Term	Definition
Evaluation Criteria	<p>The publishing of detailed objectively quantifiable award criteria and sub criteria linked to the subject matter of the contract together with their weighting (or ranking where weighting is not possible for demonstrable reasons) and the method by which you will evaluate them in the contract documents. They may include but are not limited to:</p> <p>Quality, price, technical merit, functional characteristics, environmental characteristics, running costs, life cycle costs, cost effectiveness, after-sales service and technical assistance, delivery date and delivery period or period of completion, security of supply, and interoperability and operational characteristics.</p>
Executive	The Leader and the Cabinet; responsible for carrying out almost all of the local authority's functions.
Forward Plan	A schedule of the Key Decisions the Executive expects to take over the next 4 months.
Framework Agreement	<p>An agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. In the UK we would know this as a "standing offer to treat (see Code of Practice).</p>
Financial Regulations	The Financial Regulations as approved by the full Council and set out in the constitution.
HB Public Law	The legal team within the council.
Head of Paid Services	The most senior officer, with overall responsibility for the management and operation of the Council. The Head of Paid Service is a statutory 'proper officer' role.

Term	Definition
Letter of Acceptance	A letter that creates an immediate binding contractual relationship between the Council and the successful tenderer prior to entering into a formal contract.
Letter of Intent	A letter informing a successful tenderer that it is the Council's intention to enter into a contract with her/him in the future but creates no liability in regard to that future contract.
Local Business	Organisations (private, voluntary and or community led) within Harrow who can provide goods and services to the Council
Key Decision	<p>A decision by the Executive which is likely to:</p> <ul style="list-style-type: none"> result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or be significant in terms of its effects on communities living or working in an area of two or more wards of the Borough. <p>A decision is significant for the purposes of (i) above if it involves expenditure or the making of savings of an amount in excess of £1m for capital expenditure or £500,000 for revenue expenditure or, where expenditure or savings are less than the amounts specified above, they constitute more than 50% of the budget attributable to the service in question.</p>
Members	The elected representatives of the Council
Monitoring Officer	<p>The Council officer charged with ensuring that everything that the Council does is fair and lawful.</p> <p>The Monitoring Officer is currently the Director of Corporate Governance. This is a statutory 'proper officer' role.</p>

Term	Definition
Most Economically Advantageous Tender (MEAT)	<p>Assessment of the tenders received using a variety of objective and non-discriminatory criteria linked to the subject matter of the contract to identify the tender which is best value for money.</p> <p>You cannot use the criteria for any purpose other than identifying the most economically advantageous tender from the point of view of the procurer. It allows you to assess a number of factors including the technical aspects, social value, sustainability and price of a tender and to rank the tenders in the competition.</p>
OJEU	Official Journal of the European Union
OJEU Notice	Notice posted in the Official Journal of the European Union. This includes a Prior Information Notice (PIN), a Contract Notice or a Contract Award Notice.
Partnership Agreement	Contract arrangements (including PPP and PFI) where the Council seeks to develop a relationship with a supplier based on partnership principles thereby sharing the costs and risks involved
Portfolio Holder	Responsible for ensuring the effective management and delivery of Executive functions. Each Portfolio Holder has specific areas of responsibility.
Part A Procurement	All goods or services not defined as Part B Procurement or Works.
Part B Procurement	Procurement activity which includes the provision of Health services, Social Care services, Educational services, Temporary Housing needs, recreational, cultural and sporting services.
Pre-qualification questionnaire	The questionnaire usually sent to supplier who express an interest in tendering for a Contract which seeks details and information about their technical, financial and organisational ability to perform the Contract

Term	Definition
Procurement	Any activity which includes the identification of need, options appraisal and the execution of a competitive selection process, quotation or tendering process, commercial activities and entering into contracts.
Procurement Card	A Corporate Purchasing Card for the purchase of low value goods, works or services. To be used in compliance with the Procurement Card Policy
Procurement Gateway 1	The report required to be presented to the respective procurement board and approved prior to commencing any procurement or tendering activity.
Procurement Gateway 2	The report required to be presented to the respective procurement board and then signed of by the scheme of delegation to seek authority to award a contract, extend a contract or seek a waiver to these CPRs.
Public Procurement Regulations	The main body of law that regulates the purchasing by public sector bodies and certain utility sector bodies of contracts for goods, works or services. In England these are the Public Contract Regulations 2006 which implement into UK law the European Commission's Consolidated Directives on public procurement (2004/18/EC)
Public Sector Bodies	Including, but not limited to the West London Alliance, London Councils, ESPO, Crown Commercial Services, the EFA, Greater London Authority and Transport For London
Purchase Order	The mandatory order created within the SAP System for Goods, Works or Services.
Quotation	A priced bid for the provision of goods, a service, or supply of works

Term	Definition
Scheme of Delegation	A formal document recording the agreed handing down of statutory (where allowed) and other responsibilities by the Council to the Cabinet, Cabinet Members, Committees, Panels and Officers.
Services	Means the services to be provided as specified in the Specification and shall, where the context so admits, include any materials, articles or goods to be supplied there under.
Service Specification	The document usually attached as a schedule to the terms and conditions of contract specifying in detail the Councils precise requirements relating to the purchase of goods, services or works.
Strategic Procurement Board	The group of officers who meet regularly to consider and approve procurement gateway reports and Cabinet Reports over the value of £500,000 and all key decisions.
Terms and Conditions of Contract	A document approved by HB Public Law that sets out the relationship between the Council and a third party.
Three Year Procurement Plan	Report compiled by Commercial, Contracts & Procurement Division setting out planned procurement pipelines across each directorate for the forthcoming financial year and the subsequent two years.
TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246)).	Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer.

Term	Definition
Value for Money	Value for money is not the lowest possible price; it combines goods and services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.
Waiver	An exception from the strict compliance with Contract Procedure Rules granted in accordance with the relevant section within these CPRs (section 13)
Works	Means the work or works to be provided as detailed in the service specification, including building, engineering and capital works

DRAFT