

2. Contract Procedure Rules

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1 Compliance

- 1.1 The purpose of these Contract Procedure Rules is to safeguard the interests of the City Council, its employees, or any person acting on behalf of the City Council.
- 1.2 These Contract Procedure Rules must be followed by every City Council employee and any person acting on behalf of the City Council every time there is a requirement of the City Council to procure work, goods, materials or services under a contract. All necessary legal, financial and professional advice must be taken by such employees or by such persons to ensure compliance with these Contract Procedure Rules.
- 1.3 Every City Council employee must ensure that they are aware of and observe the provisions of the City Council's Code of Conduct for Employees.
- 1.4 Corporate Directors shall ensure that the City Council complies with the statutory obligation to secure Best Value and that the City Council complies with other legislation for the time being in force.
- 1.5 These Contract Procedure Rules shall be read in conjunction with the City Council's Procurement Strategy, and the Procurement Toolkit.
- 1.6 Corporate Directors shall use the City Council's e-tendering system to procure work, goods, materials or services unless a departure from that process is expressly given by the Senior Procurement Manager.

2 Best Value

- 2.1 Best Value requires the City Council to make proper arrangements for securing continuous improvement in the economy, efficiency and effectiveness in the use of its resources and is the optimum combination of whole life costs and benefits to meet customer requirements.

Note: More information relating to whole life costing is available on the Office of Government Commerce website at <http://www.ogc.gov.uk>.

- 2.2 The CIPFA Standing Guide to the Commissioning of Local Authority Work and Services sets out guidance on compliance with the Public Contracts Regulations 2006 and any re-enactment(s) of them, together with comprehensive guidance to the whole process of securing Best Value.
- 2.3 Corporate Directors shall make use of the Corporate Procurement Toolkit to procure work, goods, materials or services on behalf of the City Council.
- 2.4 Best Value requires the City Council to identify those quotations and tenders which will secure the best balance of price against quality over the whole life of the scheme.

- 2.5 The best and most widely accepted way of securing the necessary transparency in the evaluation of all the price and quality factors contained in quotations and tenders received is to adopt a robust points system which provides a pre-disclosed maximum number of points for price and for each factor in quality.
- 2.6 Corporate Directors shall adopt the Quotation/Tender Evaluation Models recommended by the Corporate Procurement Unit or set out in the Corporate Procurement Toolkit, to ensure compliance with the requirements of these Contract Procedure Rules, where any scheme has a procurement requirement falling within the EU procurement regime and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant EU threshold figure for the time being in force.
- 2.7 Corporate Directors shall adopt the Quotation/Tender Evaluation Models recommended by the Corporate Procurement Unit or set out in the Corporate Procurement Toolkit to ensure compliance with the requirements of these Contract Procedure Rules where any scheme does not have a procurement requirement falling within the EU procurement regime or, if it does, whose value, or (if made up of a series of related schemes) whose aggregate value is not likely to exceed the relevant EU threshold figure for the time being in force.

3 **Partnering/Framework Agreements**

- 3.1 Corporate Directors shall adopt an integrated approach to procurement by actively considering whether the use of partnering or framework agreements is an appropriate form of service delivery for any of their services.
- 3.2 The overriding ethos of partnering is to provide a formal legally binding relationship that allows each party to a project to form a partnering team to work together to deliver the project in line with the principles of Best Value.
- 3.3 The early integration of the partnering team and the procurement process can achieve substantial improvements in the procurement of projects.
- 3.4 Partnering requires the partners to deal fairly with each other and work together in a spirit of mutual trust, respect, good faith, co-operation and dedication to agreed common goals and an understanding of each other's expectations and values.
- 3.5 Partnering is designed to facilitate collaborative working which can be achieved through either project partnering or strategic alliancing, which is the grouping of a number of projects in order to obtain the benefits of long-term relationships.
- 3.6 Corporate Directors shall ensure that the collaborative culture is fully embedded in all procedures, where partnering has been adopted.

- 3.7 There are various contract options available to provide a contractual arrangement to suit a partnering environment. These contracts have been developed on the basis of clear guidance from the Construction Industry Council and embrace the recommendations of Sir John Egan and Sir Michael Latham.
- 3.8 Framework agreements established in pursuance of the Public Contracts Regulations 2006 and any re-enactment(s) of them by other contracting authorities shall be used where it is possible for the City Council to access such frameworks and where such use will ensure compliance with the requirements of these Contract Procedure Rules (refer to paragraph 4.2.4 of these Contract Procedure Rules for framework agreements directly established by the City Council).
- 3.9 Corporate Directors shall ensure that the details of every partnering contract and framework agreement option is referred to a Legal Services Manager for a consideration of the suitability of the arrangement concerned and the City Council's legal liability before such arrangement is concluded.

Note: More information on partnering can be found at www.ogc.gov.uk and in the CIPFA Standing Guide to the Commissioning of Local Authority Works and Services.

4 **Selection of Suppliers**

- 4.1 Corporate Directors shall ensure compliance with the City Council's Corporate Procurement Contracts currently in force to procure work, goods, materials or services. These are arrangements established by the City Council's Senior Procurement Manager, which in part, are operated in conjunction with the City Council's Purchasing Card Scheme outlined in paragraph 4.9 of these Contract Procedure Rules.

4.1.1 Where a corporate procurement arrangement has not been established, Corporate Directors shall ensure that quotations and tenders be invited by the use of one of the following approaches:

4.1.1.1 EU public procurement – the EU public procurement regime is mandatory for any scheme which has a procurement requirement falling within the EU procurement regime and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant EU threshold figure for the time being in force.

4.1.1.2 Approved Lists.

4.1.1.3 Joint procurement arrangements / frameworks/ purchasing consortia arrangements established by other contracting authorities.

- 4.1.1.4 Office of Government Commerce (OGC) Buying Solutions framework contracts or other such like contracts.
- 4.1.1.5 Suitable suppliers derived from a competitive selection process conducted in consultation with the Senior Procurement Manager and where necessary, also with a Legal Services Manager.
- 4.1.2 Corporate Directors are encouraged to adopt a collaborative approach to procurement, where appropriate, through the use of partnering as described in paragraph 3 of these Contract Procedure Rules. A partner is obtained through a competitive selection process which can be demonstrated by using any of the arrangements set-out in paragraph 4.1 of these Contract Procedure Rules.

4.2 EU Public Procurement including Framework Agreements

- 4.2.1 Corporate Directors shall ensure that the letting of a scheme which has a procurement requirement falling within the EU procurement regime and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant EU threshold figure for the time being in force, complies with the requirements of the Public Contracts Regulations 2006 and any re-enactment(s) of them in respect of technical specifications and procedures covering the seeking of tenders, the selection of the successful supplier(s) and awards.
- 4.2.2 Corporate Directors shall ensure that any scheme which has a procurement requirement falling within the EU procurement regime and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant EU threshold figure for the time being in force is referred to the City Council's Senior Procurement Manager to ensure compliance with the Public Contracts Regulations 2006 and any re-enactment(s) of them.
- 4.2.3 Corporate Directors shall ensure that the appropriate advertisements are placed in the Official Journal of the European Union (OJEU) and other relevant publications in conjunction with the City Council's Senior Procurement Manager. The City Council's Senior Procurement Manager shall maintain a register of such advertisements so placed.
- 4.2.4 Corporate Directors shall ensure compliance with the requirements of the Public Contracts Regulations 2006 and any re-enactment(s) of them where it is intended that the City Council should enter into a framework agreement for any scheme which has a procurement requirement falling within the EU procurement regime and, if so,

whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant EU threshold figure for the time being in force (refer to paragraphs 3.8, 4.4 and 4.5 of these Contract Procedure Rules for the use of framework agreements established by other contracting authorities).

4.2.5 Corporate Directors shall have the discretion, in consultation with the City Council's Senior Procurement Manager, to adopt the requirements of the Public Contracts Regulations 2006 and any re-enactment(s) of them where it is intended to enter into a framework agreement for any scheme which does not have a procurement requirement falling within the EU procurement regime or, if it does, whose value, or (if made up of a series of related schemes) whose aggregate value is not likely to exceed the relevant EU threshold figure for the time being in force, otherwise the requirements of these Contract Procedure Rules shall be complied with.

4.2.6 Corporate Directors shall ensure that framework agreements are created and maintained whenever it is deemed appropriate in pursuit of securing continuous improvement in the economy, efficiency and effectiveness in the use of City Council's resources to secure Best Value for the City Council.

4.3 **Approved Lists**

4.3.1 Corporate Directors may use approved lists of contractors where procurement law allows for this. Such approved lists may only be established, maintained and used strictly in accordance with the requirements of the Chief Finance Officer.

4.4 **Joint Procurement Arrangements / Frameworks/ Purchasing Consortia**

4.4.1 To fulfil their requirements, Corporate Directors may use a number of arrangements established outside the City Council by other parties, provided that those parties are "contracting authorities" as defined by the Public Contracts Regulations and any re-enactment(s) of them, these arrangements being:

4.4.1.1 Joint procurement arrangements with other local authorities.

4.4.1.2 Framework arrangements established by contracting authorities such as the East Midlands Property Alliance (EMPA).

4.4.1.3 Purchasing consortia established by contracting authorities such as the Eastern Shires Purchasing Organisation (ESPO).

- 4.4.2 Any requirement of the City Council involving the procurement of work, goods, materials or services via joint procurement arrangements with other local authorities, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, shall be deemed to comply with the corresponding requirements of these Contract Procedure Rules.
- 4.4.3 Framework arrangements established by contracting authorities must be evaluated and approved by the Senior Procurement Manager and a Legal Services Manager before being used.
- 4.4.4 Any requirement of the City Council involving the procurement of work, goods, materials or services via the use of purchasing consortia shall be deemed to comply with the requirements of these Contract Procedure Rules covering the seeking of quotations or tenders, the selection of the successful supplier(s) and awards.
- 4.4.5 In all cases where the fulfilment of requirements using arrangements referred to in paragraph 4.4.1 of these Contract Procedure Rules is being considered, Corporate Directors must be satisfied that the Public Contracts Regulations 2006 and any re-enactment(s) of them have been complied with by the other contracting authorities, otherwise the requirements of these Contract Procedure Rules shall be followed.
- 4.4.6 Corporate Directors shall ensure that the proposed terms and conditions that are to apply are adequate and appropriate and where necessary shall refer them to a Legal Services Manager for a consideration of the suitability of the arrangement concerned and of the City Council's legal liability before proceeding with or entering into any arrangement referred to in paragraph 4.4.1 of these Contract Procedure Rules.
- 4.4.7 Corporate Directors shall ensure that the terms and conditions entered into are complied with.
- 4.4.8 Corporate Directors shall ensure that where a framework agreement is entered into, the provisions of such agreement regarding the number of suppliers to be invited to provide quotations or to submit tenders in pursuance of that agreement are followed, notwithstanding the requirements of paragraph 5 of these Contract Procedure Rules.

4.5 Office of Government Commerce (OGC) Buying Solutions Framework Contracts

- 4.5.1 Corporate Directors may make use of the Office of Government Commerce (OGC) Buying Solutions framework contracts or other such like contracts and the use of them shall be deemed to comply with the requirements of these Contract Procedure Rules covering the seeking of quotations or tenders, the selection of the successful supplier(s) and awards.
- 4.5.2 Corporate Directors must be satisfied that the Public Contracts Regulations 2006 and any re-enactment(s) of them have been complied with; otherwise the requirements of these Contract Procedure Rules shall be followed.
- 4.5.3 Corporate Directors shall ensure that the proposed terms and conditions that are to apply are adequate and appropriate and where necessary refer them to a Legal Services Manager for a consideration of the suitability of the arrangement concerned and of the City Council's legal liability before proceeding with or entering into OGC Buying Solutions contracts or any other such like contracts.
- 4.5.4 Corporate Directors shall ensure that the terms and conditions entered into are complied with.

4.6 Suitable Suppliers

- 4.6.1 Corporate Directors shall, in consultation with the Senior Procurement Manager and where necessary, also with a Legal Services Manager, have discretion to invite quotations and tenders from suppliers known to be suitable and eligible for inclusion into the relevant approved list(s).
- 4.6.2 Corporate Directors, however, are under a statutory obligation to secure Best Value.

4.7 Corporate Procurement Arrangements

- 4.7.1 The City Council's Senior Procurement Manager shall ensure that each City Council corporate procurement arrangement be established in accordance with the provisions of these Contract Procedure Rules.

4.8 Vetting of Suppliers

- 4.8.1 Corporate Directors shall ensure that suppliers are vetted for financial stability, technical competence, managerial capability, previous performance and (but only so far as is relevant to a procurement process and is lawful) for the ability to comply with any national legislation and City Council policies and procedures before each scheme is let or before being included into the relevant approved list(s), whichever is the earlier. Where

applicable, Corporate Directors shall ensure that suppliers meet adequate and appropriate standards of health and safety.

- 4.8.2 Corporate Directors shall ensure that suppliers are subsequently vetted at intervals not exceeding 3 years, for technical competence, managerial capability, previous performance and, where applicable, health and safety, and for financial stability at intervals not exceeding 12 months, to verify or otherwise their continuance in the relevant approved list(s).
- 4.8.3 Corporate Directors shall ensure that all properly vetted suppliers can be brought into the relevant approved list(s) at any time.
- 4.8.4 Corporate Directors shall ensure that all suppliers of construction and engineering related work, howsoever sourced, have adopted the City Council's 'Code of Practice for Employment and Training : Construction Sector 2002', or its successor, and have endorsed its principles and agreed to implement its actions, before each scheme is let.

4.9 **Purchasing Cards**

4.9.1 Corporate Directors shall:

4.9.1.1 Maximise the use of the City Council's Purchasing Card Scheme as outlined in The Purchase Card Procedure Guide, as part of their procurement regime.

4.9.1.2 Ensure that purchasing cards are used:

4.9.1.2.1 in the procurement process for goods, materials and services where arrangements for their use has been made in conjunction with the City Council's Senior Procurement Manager. These are listed in Appendix 6 of The Purchase Card Procedure Guide;

4.9.1.2.2 in support of procurement over the internet on secure sites and in accordance with the guidance provided in Appendix 7 of The Purchase Card Procedure Guide; and

4.9.1.2.3 in other circumstances agreed with the Chief Finance Officer.

5 **Invitations to Suppliers**

5.1 **Procurement of schemes for work, goods, materials and services (including schemes involving construction and engineering related work):**

- 5.1.1 Where the estimated value of a scheme over the whole life of the scheme is between £10,000 and £50,000 (between £5,000 and £50,000 for Schools), Corporate Directors shall make every effort to obtain at least 3 quotations in writing, except where corporate contracts have been established by the City Council's Senior Procurement Manager or where framework agreements or other arrangements are legally accessible pursuant to paragraph 4 of these Contract Procedure Rules. Corporate Directors, however, may elect to seek tenders in lieu of quotations.
- 5.1.2 Where the estimated value of a scheme over the whole life of the scheme exceeds £50,000 (also £50,000 for Schools), Corporate Directors shall make every effort to obtain at least 3 tenders in writing, except where corporate contracts have been established by the City Council's Senior Procurement Manager or where framework agreements or other arrangements are legally accessible pursuant to paragraph 4 of these Contract Procedure Rules.
- 5.2 Formal Quotations and Tenders need not be sought:
- 5.2.1 If the estimated value of a scheme over the whole life of the scheme is less than £10,000 (£5,000 for Schools).
- 5.2.2 In the event of an emergency (Financial Regulation 3.27).
- Corporate Directors, however, shall ensure that the most suitable arrangement is secured for the City Council and the details are recorded in writing.
- 5.3 Corporate Directors shall ensure that the City Council's e-tendering system shall be used wherever possible when inviting and receiving quotations and tenders electronically.
- 5.4 In consultation with a Legal Services Manager, the Senior Procurement Manager shall ensure that the City Council's e-tendering system complies with the requirements of the Public Contracts Regulations 2006 and any re-enactment(s) of them.
- 5.5 Other methods such as e-auctions and dynamic purchasing systems may be used to invite and receive quotations and tenders electronically, provided there is no conflict with the requirements of the Public Contracts Regulations 2006 and any re-enactment(s) of them, otherwise the requirements of these Contract Procedure Rules shall be complied with.
- 5.6 Corporate Directors shall ensure that any individual scheme is not artificially divided into two or more separate schemes with the intention of avoiding the application of these Contract Procedure Rules.

- 5.7 Corporate Directors shall ensure that each individual scheme be packaged to secure Best Value for the City Council.
- 5.8 Corporate Directors shall ensure that suppliers invited to provide quotations or to submit tenders are contacted and (regardless of the process being used) a record maintained on the City Council's e-tendering system of the requests made and their agreement to provide quotations or submit tenders.
- 5.9 Corporate Directors shall ensure that where there is a multiple stage process for inviting quotations or tenders then any criteria to be used for short-listing suppliers throughout such process is robust and transparent and shall make use of the assistance available from the Corporate Procurement Unit or set out in the Corporate Procurement Toolkit.
- 5.10 Corporate Directors shall ensure that a realistic period be stipulated in the invitations to suppliers to provide quotations or to submit tenders, with a minimum period of ten working days allowed for a response. This period may be reduced provided the special circumstances are recorded.
- 5.11 Corporate Directors shall ensure that invitations to suppliers to provide quotations or to submit tenders for work, goods, materials or services, incorporate:
- 5.11.1 the requirements set-out in these Contract Procedure Rules appropriate to the circumstances of the invitation;
 - 5.11.2 a specification that describes the City Council's requirements in sufficient detail to enable the submission of competitive offers;
 - 5.11.3 the nature and quantity of the work, goods, materials or services that is required;
 - 5.11.4 the time, or times, within which the work or services are to be performed or the goods and materials are to be delivered;
 - 5.11.5 a notification that assignment or sub-contracting is not permitted without prior written consent from the City Council, unless the circumstances of the particular invitation require a different approach;
 - 5.11.6 a notification that quotations are provided and tenders are submitted to the City Council on the basis that they are compiled and delivered at the supplier's expense and that, in no circumstances, will the City Council contribute to such expenses whatever the outcome of the procurement process;
 - 5.11.7 a notification that the City Council is not bound to accept the lowest or any quotation or tender for a specific scheme;

- 5.11.8 a Certificate of Bona Fides;
 - 5.11.9 a Form of Tender;
 - 5.11.10 adequate and appropriate provisions regarding insurances, health and safety, equality and diversity, data protection and freedom of information;
 - 5.11.11 adequate and appropriate price adjustment provisions (unless the circumstances of the particular invitation require a different approach), anti-collusion provisions; anti-corruption provisions and anti-fraud provisions (refer to paragraph 9.7(vi) of these Contract Procedure Rules);
 - 5.11.12 robust and transparent award criteria to be used in evaluating quotations or tenders received to ensure compliance with the requirements of these Contract Procedure Rules; and/or
 - 5.11.13 any other relevant items that are considered necessary.
- 5.12 Corporate Directors shall ensure that the information set-out in paragraphs 5.11.1 to 5.11.13 inclusive of these Contract Procedure Rules be issued to each supplier invited to provide quotations or to submit tenders at the same time. Any supplemental information must be given on the same basis.
- 5.13 Corporate Directors shall ensure that TUPE issues are considered when any employee either of the City Council or of an incumbent provider of work or services may be affected by any transfer arrangement and obtain advice from a Legal Services Manager before proceeding with invitations to suppliers to provide quotations or to submit tenders.
- 6 This paragraph relates to tendering procedures for schemes in respect of which the City Council's e-tendering system is not used as expressly agreed by the Senior Procurement Manager involving construction and engineering related work or schemes estimated to have a value over the whole life of the scheme exceeding £50,000 for work, goods, materials and services, provided there is no conflict with the requirements of the Public Contracts Regulations 2006 and any re-enactment(s) of them**
- 6.1 Corporate Directors shall ensure that all suppliers invited to submit a tender (regardless of the process being used) confirm receipt of the tender documents, using the City Council's e-tendering system.
 - 6.2 Unless otherwise stipulated in the tender documents, all tenders must be delivered to a Legal Services Manager and in a plain envelope.
 - 6.3 Corporate Directors shall ensure that the tender documents stipulate that all envelopes containing tenders shall be securely sealed and shall bear the word 'TENDER' followed by the name and/or reference of the scheme

to which the tender relates. Also, such envelopes shall not bear any distinguishing mark intended to indicate the identity of the supplier.

- 6.4 Corporate Directors shall ensure that all envelopes containing tenders remain in the custody of the designated officer concerned until the time appointed for their opening.
- 6.5 Corporate Directors shall ensure that the envelopes containing tenders for the same scheme be opened at the same time by the designated officer concerned who shall do so in the presence of another officer or officers approved by the designated officer concerned for that purpose.
- 6.6 Corporate Directors shall ensure that tenders received for whatever reason after the specified time or date or not delivered to the City Council in accordance with the tender instructions will not be considered without the express agreement of the Senior Procurement Manager and a Legal Services Manager.

7 Procedures for Quotation and Tender Discussion and/or Clarification

7.1 Pre-Quotation and Pre-Tender Discussion

- 7.1.1 Discussion prior to inviting quotations or tenders with potential suppliers may be appropriate in special circumstances as part of the competition process and in order to secure Best Value for the City Council, provided there is no conflict with the requirements of the Public Contracts Regulations 2006 and any re-enactment(s) of them. The objective of such discussion is to ensure that an effective invitation is prepared. All potential suppliers must be treated equally within this process.

7.2 Post-Quotation and Post-Tender Clarification

- 7.2.1 Clarification after receipt of quotations or tenders and before the letting of scheme(s) with those supplier(s) who have submitted such quotations or tenders may be appropriate in special circumstances as part of the competition process and in order to secure Best Value for the City Council, provided there is no conflict with the requirements of the Public Contracts Regulations 2006 and any re-enactment(s) of them. The objective of such discussion is to obtain an improvement in content of these quotations or tenders in circumstances which do not put the other supplier(s) at a disadvantage, distort competition or affect adversely trust in the competition process. All potential suppliers must be treated equally within this process.

- 7.2.2 Where post-quotation or post-tender clarification results in a fundamental change to the specification or the proposed terms and conditions that are to apply, an official order must not be

issued or a formal contract must not be made and quotations or tenders must be re-invited.

7.3 Notification

7.3.1 Corporate Directors may authorise such discussion and/or clarification within a specific scheme, provided the special circumstances are recorded, including a record of the discussion and/or clarification. Corporate Directors shall notify a Legal Services Manager of the discussion and/or clarification and actions taken, at the earliest opportunity.

8 Acceptance of Quotations and Tenders

8.1 Whenever the City Council's e-tendering system is not used, Corporate Directors shall ensure that a record of the quotations received be prepared, signed, dated and timed, which record shall include the date and time each quotation is received, together with the main terms of each quotation (e.g. value, price, delivery period, or other significant issues unique to each quotation).

8.2 Whenever the City Council's e-tendering system is not used, Corporate Directors shall ensure that a record of the tenders received is prepared, signed, dated and timed and countersigned by another officer or officers present, which record shall include the date and time each tender is received, together with the main terms of each tender (e.g. value, price, delivery period, or other significant issues unique to each tender).

8.3 Subject to any legal obligations on the City Council, Corporate Directors shall ensure that the confidentiality of quotations and tenders received and the identity of the corresponding supplier is preserved at all times and that information about one supplier's offer shall not be given to another supplier.

8.4 Where a quotation or tender is received from a consortium, which is acting jointly for the purpose of being awarded a scheme, such quotation or tender shall be evaluated in accordance with the requirements of either paragraph 8.5 or paragraph 8.5.1 of these Contract Procedure Rules.

8.4.1 Corporate Directors shall ensure that any quotation or tender of a consortium is not treated as ineligible on the grounds that the consortium has not formed a legal entity for the purposes of providing a quotation or submitting a tender.

8.4.2 Where the quotation or tender received from a consortium is to be accepted, Corporate Directors shall ensure that the proposed terms and conditions that are to apply are referred to a Legal Services Manager for consideration of the City Council's legal liability before proceeding with or entering into an official order or a formal contract. A Legal Services Manager shall decide on

whether to require the consortium to form a legal entity before entering into, or as a term of, the official order or formal contract.

- 8.4.3 The vetting of the consortium shall be in accordance with the requirements of paragraph 4.8.1 of these Contract Procedure Rules, and for schemes involving construction and engineering related work, paragraph 4.8.4 of these Contract Procedure Rules.
- 8.5 Corporate Directors shall ensure that tenders received are evaluated in accordance with the Quotation/Tender Evaluation Model recommended by the Corporate Procurement Unit or set out in the Corporate Procurement Toolkit where any scheme has a procurement requirement falling within the EU procurement regime and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant EU threshold figure for the time being in force.
- 8.5.1 Corporate Directors shall ensure that quotations received and tenders received are adequately and appropriately evaluated where any scheme does not have a procurement requirement falling within the EU procurement regime or, if it does, whose value, or (if made up of a series of related schemes) whose aggregate value is not likely to exceed the relevant EU threshold figure for the time being in force and shall adopt the Quotation/Tender Evaluation Model recommended by the Corporate Procurement Unit or set out in the Corporate Procurement Toolkit.
- 8.6 Corporate Directors shall ensure that errors or discrepancies found in quotations or tenders be adequately and appropriately dealt with. Where such error or discrepancy cannot be adequately and appropriately dealt with the matter shall be immediately referred to the Chief Finance Officer for a decision.
- 8.7 Corporate Directors shall ensure that the quotation or tender which secures Best Value for the City Council be accepted, provided that there is no conflict with the Public Contracts Regulations and any re-enactment(s) of them.
- 8.8 Corporate Directors shall ensure that a record is kept of the withdrawal of a quotation or tender by a supplier within a specific scheme together with the circumstances of such withdrawal.
- 8.8.1 Corporate Directors shall ensure that this information is reported to all officers responsible for the selection of suppliers who may be invited to provide quotations or submit tenders for the provision of work, goods, materials or services.
- 8.9 Corporate Directors shall ensure that where the accepted quotation or tender is changed following the rectification of errors or discrepancies

and/or post-quotation/tender clarification, such amendment(s) be initialled by Corporate Directors or authorised signing officer(s).

- 8.10 Corporate Directors shall ensure that suppliers whose quotation or tender for a specific scheme is not accepted be notified and given the names of all suppliers who provided a quotation or submitted a tender, together with the prices, or ranges of prices, so provided or submitted. Such prices, or range of prices, must not be correlated to the names of the suppliers.
- 8.11 Each scheme shall be let on the authority of a Corporate Director, following a decision having been taken on the acceptance of a quotation or tender by an appropriate decision-maker (i.e., for executive business a Corporate Director (or other specifically delegated officer), portfolio holder/Leader or Executive Board) in accordance with the currently prevailing financial limits.
- 8.12 Notwithstanding any current requirements for reporting of decisions, Corporate Directors shall ensure that a quarterly report be forwarded to the Chief Finance Officer which sets out all schemes exceeding £50,000 (also £50,000 for Schools) let under the authority of such Corporate Directors in the preceding quarter. Any special circumstances (e.g. emergency and/or operational action) or items of an exceptional nature must be included in the report.
- 8.13 Corporate Directors shall ensure compliance with the relevant provisions of these Contract Procedure Rules where the accepted quotation or tender incorporates provisional, prime cost or non-defined items or other such similar items.

9 Orders and Contracts

- 9.1 All schemes must be evidenced by means of an official order or a formal contract. Such official order must be issued or such formal contract must be made to all suppliers for the provision of schemes, before the relevant supply, service or work begins, except in exceptional circumstances as provided for in paragraph 9.2 of these Contract Procedure Rules.
- 9.1.1 Corporate Directors shall ensure that official orders are raised through the City Council's main financial system, except where the City Council's Purchasing Card Scheme has been used in compliance with the requirements of paragraph 4.9 of these Contract Procedure Rules.
- 9.1.2 Corporate Directors shall ensure that official orders are also raised through the City Council's main financial system:
- 9.1.2.1 For call-offs, draw-downs or other similar arrangements, where an official order has already been issued or formal contract has already been made, or where a series of official orders have already been issued or formal contracts have already been made with the same

external organisation, which relate to the same scheme;
and

- 9.1.2.2 For budgetary purposes, where a formal contract has already been made. However, such budgetary orders shall not be issued to suppliers, but shall be retained by the relevant City Council department.

NOTES

- A. *The law prevents formal contracts being made between City Council Departments. However, any agreement between City Council Departments relating to a scheme must be evidenced by the issue of an official order.*
- B. *Contracts under seal are made to provide a 12 year period within which action can be taken for breach. Under simple contracts (contracts which are only signed), this period is reduced to 6 years. In the determination of which to choose, risk is a factor in addition to value.*
- C. *The Director Legal and Democratic Services, and Legal Services Managers, have authority to make contracts under seal. Simple contracts may only be made in accordance with paragraph 9 of these Contract Procedure Rules.*
- D. *The Chief Finance Officer may authorise specific exceptions to the requirement that all schemes be evidenced by means of an official order or formal contract. The Chief Finance Officer may only provide such authorisation after consultation with the Director Legal and Democratic Services.*
- 9.2 In exceptional circumstances, where an official order has been raised electronically, i.e. by telephone, e-mail or fax transmission, Corporate Directors shall ensure that an official confirmatory order be issued through the City Council's main financial system without undue delay. Such official confirmatory order shall be clearly marked "**CONFIRMATION ONLY**".
- 9.3 Corporate Directors shall ensure that an official order or a formal contract for any individual scheme is not artificially divided into two or more separate official orders or formal contracts with the intention of avoiding the application of these Contract Procedure Rules.
- 9.4 **Where any scheme has a value of £2,000,000 or more:**
- 9.4.1 The Director Legal and Democratic Services or a Legal Services Manager must make a formal contract under seal where the value of any scheme is £2,000,000 or more. The affixing of the seal to such contract must be witnessed by hand by the Director Legal and Democratic Services or a Legal Services Manager.

9.4.2 A Legal Services Manager (taking into consideration the risks involved) may deem a formal contract under seal to be inappropriate in any particular case (except for schemes involving construction and engineering related work), even where the value of the scheme not involving construction and engineering related work is £2,000,000 or more. In this case, the Corporate Director concerned shall ensure that an official order or a simple contract relating to such scheme is made in such terms that have the prior approval of a Legal Services Manager. For the avoidance of doubt, such official order, as well as such simple contract, must be in printed format only and must be signed by hand by at least two signing officers.

9.5 Where any scheme has a value of less than £2,000,000:

9.5.1 The Corporate Director concerned must issue an official order or make a simple contract where the value of any scheme is less than £2,000,000. Such official order or such simple contract must be made in such terms that have the prior approval of a Legal Services Manager and be signed by at least one signing officer. For the avoidance of doubt, such simple contract must be in printed format only and must be signed by hand.

9.5.2 A Legal Services Manager (taking into consideration the risks involved) may deem an official order or simple contract inappropriate in any particular case, even where the value of the scheme is less than £2,000,000. In this case, the Corporate Director concerned shall ensure that a formal contract under seal relating to the scheme is made in such terms that have the prior approval of a Legal Services Manager and in accordance with paragraph 9.4 of these Contract Procedure Rules.

9.5.3 Corporate Directors may authorise, in writing, other officers to sign official orders or simple contracts or to authorise such orders or contracts electronically in a main financial system on their behalf at a value agreed with the Chief Finance Officer provided Corporate Directors are satisfied that their officers have received relevant financial training as approved by the Chief Finance Officer (see Financial Regulation D.5) and the relevant form has been completed.

Corporate Directors shall supply the names and signatures of signing officers together with the corresponding signing/authorising limits to the Chief Finance Officer. Corporate Directors shall prepare and keep up-to-date a register of names and signatures of signing officers together with the corresponding signing limits, which shall be made available to the Chief Finance Officer upon request.

9.6 **Corporate Directors shall ensure that:**

- i) no official order be issued or formal contract made for a scheme which will commit the City Council to expenditure unless provision exists to finance that expenditure, except in the event of an emergency;
- ii) no official order be issued or formal contract made for work, goods, materials or services for the private use of any person;
- iii) only official order forms in a format approved by the Chief Finance Officer be used;
- iv) each official order or formal contract indicates clearly the nature and quantity of the work, goods, materials or services, the agreed value or price and provisions for payment, any trade or cash discount or allowance, the time, or times, within which such order or contract is to be performed, together with any reference to a quotation, tender or other arrangement;
- v) each official order or supplier's form of order used to call-off, draw-down or make other similar arrangements where a formal contract in respect of such requirements is already made (whether such contract be under seal or a simple contract) contains full details of the contract in question, including as a minimum: the date of the contract, the names of the parties to it and a description of the work, goods, materials or services (as the case may be) which form the subject-matter of the contract. Each such order must also contain the following text (or such other similar text as a Legal Services Manager may decide):

"The terms and conditions on the reverse side of this order do not apply. The terms and conditions of the contract mentioned in this order shall apply to the subject-matter of this order which is therefore issued on this understanding. No change to this understanding shall be permitted without the express consent in writing of an authorised officer of the Council.";

- vi) each official order or formal contract contains adequate and appropriate (and in addition, the applicable requirements of paragraphs 5.11.1 to 5.11.13 inclusive of these Contract Procedure Rules):
 - price adjustment provisions;
 - anti-collusion provisions;
 - anti-corruption provisions; and
 - anti-fraud provisions;

- vii) each official order or formal contract contains the following clause (or such other similar clause as a Legal Services Manager may decide):

“The City Council shall be entitled to immediately cancel this contract and to recover from the supplier all costs and losses resulting from such cancellation, if the supplier, or any person employed by, or acting on behalf of the supplier (whether with or without the knowledge of the supplier), shall:

(a) have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation to the obtaining the execution of this contract, or any other contract with the City Council; or

(b) for showing, or forbearing to show, favour or disfavour to any person in relation to this contract, or any other contract with the City Council; or

(c) has been convicted of any offence under the Bribery Act 2010; or

(d) shall have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972.

For the avoidance of doubt, the events under sub-clauses (c) and (d) above shall apply to this contract, or any other contract with the City Council or with any other party, or in respect of any relevant function or activity, as the case may be.”;

- viii) where applicable, and with the advice of a Legal Services Manager, each official order or formal contract for schemes exceeding £10,000 in value contain provisions for (and in addition to the other requirements of this paragraph 9.6 of these Contract Procedure Rules):

- the cancellation of such official order or formal contract;
- the making of retentions; and
- the deduction of liquidated and ascertained damages in the event of the supplier's non-compliance by the due or any extended completion date for a scheme;

Where the City Council has a right to liquidated and ascertained damages, such right must be enforced by deductions from monies owing to the supplier.

Any deduction of liquidated and ascertained damages shall be made in accordance with a certificate or instruction issued by Corporate Directors or authorised issuing officers;

- ix) the proposed terms and conditions that are to apply to each official order or formal contract are adequate and appropriate and where necessary, be referred to a Legal Services Manager for consideration of the City Council's legal liability before proceeding with or entering into such official order or formal contract;
- x) where the terms of any official order or a formal contract are changed, such amendment(s) be initialled by Corporate Directors or authorised signing officers. In addition, the copy of an official order so changed and held by the issuing City Council department, be amended accordingly;
- xi) as soon as possible after any official order has been made, a register be kept of such orders made; and
- xii) a scanned copy of every executed formal contract is sent to the Senior Procurement Manager for storing on the City Council's e-tendering system, together with an electronic record of the names of the City Council and supplier contacts relevant to each such contract.

9.7 A Legal Services Manager shall ensure that as soon as possible after any formal contract has been made, the Chief Finance Officer is notified and a register be kept of such contracts made.

9.8 An official order or formal contract relating to any scheme may be extended to include further requirements relating to the scope of that scheme provided in doing so, there is no conflict with the requirements of the Public Contracts Regulations 2006 and any re-enactment(s) of them, Best Value continues to be secured for the City Council and if at the time such requirements are intended to be supplied, all of the following criteria are satisfied:

9.8.1 the further requirements are of a similar description to that in the scope of the original scheme;

9.8.2 the extension is the subject of approval by the relevant Portfolio Holder either because:

9.8.2.1 the value of the original scheme was below the financial limit for Portfolio Holder approval under the Financial Regulations but when added to the value of the further requirements the total value exceeds such financial limit current at the time when such further requirements are intended to be supplied; or

9.8.2.2 the original scheme was the subject of approval by the relevant Portfolio Holder but the value of the further requirements increases the total value and requires

Portfolio Holder approval as a check on financial commitment;

- 9.8.3 on the date that the extension is granted, not more than 12 months have elapsed since the date of the original official order or formal contract;
 - 9.8.4 the original scheme has not been extended in the same way before;
 - 9.8.5 provision exists to finance the expenditure for the further requirements;
 - 9.8.6 Corporate Directors inform the Chief Finance Officer of the circumstances; and
 - 9.8.7 the City Council can, lawfully, grant such an extension.
- 9.9 Corporate Directors shall ensure that any contingency allowance incorporated into an official order or formal contract does not exceed 10% of the estimated cost of a scheme.
- 9.10 Corporate Directors shall ensure that variations to the scope of construction and engineering related work provided for by an official order or formal contract be authorised in accordance with the terms of such official order or formal contract, provided provision exists to finance that expenditure, except in the event of an emergency. Such authorisation shall be given in writing and shall state the agreed price of each variation or the agreed basis on which the cost of such variation is to be calculated. In urgent cases, verbal authorisation(s) may be given, but this must be confirmed in writing within 7 days, or in accordance with the appropriate term(s) of the official order or formal contract.
- 9.11 **Provision of Work, Goods, Materials or Services by the City Council to Other Organisations**
- 9.11.1 A Legal Services Manager must be consulted where it is contemplated that any work, goods, materials or services will be provided to organisations other than the City Council whether on such organisation's terms and conditions or those of the City Council.
- 10 **Supplier Performance**
- 10.1 Corporate Directors shall ensure that each official order or formal contract for work, goods, materials or services contains adequate and appropriate provisions for supervising and monitoring supplier performance including the quality and standard of such work, goods, materials or services.
- 10.2 During the performance of an official order or formal contract for work, goods, materials or services, Corporate Directors shall ensure that supplier

performance, compliance with specification, expenditure, progress, risk and user satisfaction are monitored and also, where necessary, ensure that adequate and appropriate actions are taken to rectify and overcome any short-comings.

- 10.3 Corporate Directors shall ensure that claims received from suppliers of work, goods, materials or services in respect of matters not clearly in accordance with the terms of the official order or formal contract, or from other external organisations, be referred to a Legal Services Manager for consideration of the City Council's legal liability as soon as they are notified to the City Council.
- 10.4 Corporate Directors shall ensure that claims made against suppliers of work, goods, materials or services or other external organisations be referred to a Legal Services Manager for consideration of the City Council's legal liability as soon as they become reasonably apparent.
- 10.5 Corporate Directors shall ensure that where suppliers are required to provide guarantees then such guarantees are adequate and appropriate and underwritten by an insurance company or similar financial institution.

11 **Payments**

- 11.1 Corporate Directors shall ensure that payments to suppliers for work, goods, materials or services are certified and made in accordance with:
- 11.1.1 The appropriate term(s) of the official order or formal contract; and
- 11.1.2 Corporate Financial Procedures D.60 and D.67.

12 **Performance Security Arrangements**

- 12.1 Corporate Directors shall ensure that procurement exercises allow for the obtaining of security for the due performance of all schemes (whether they be schemes involving goods, materials or services or involving construction and engineering related work) between the City Council and any external organisation where the value of such scheme is estimated to be £2,000,000 or more. Such security may be by way of performance bonding, parent company/third party guarantees, deposit of money as security or other means considered appropriate by a Legal Services Manager. The Legal Services Manager may decide that such security is not required for the procurement, in which case the following requirements shall not apply.
- 12.2 Each external organisation invited to submit a tender in respect of a scheme having a value estimated to be £2,000,000 or more must be required to make its own security arrangements and allow for the cost of such provision in its tender. Corporate Directors shall ensure that:

- 12.2.1 the need for such allowance is made clear in the tender documents;
 - 12.2.2 in conjunction with a Legal Services Manager, that the terms of such security arrangements are adequate and appropriate; and
 - 12.2.3 the scheme must not commence until a decision has been made by a Legal Services Manager as to whether such security arrangements should be put into effect.
- 12.3 For the purpose of this Contract Procedure Rule 12, the estimated value of a scheme shall be the higher value of either:
- 12.3.1 the value of any official order to be issued to or formal contract to be made with the external organisation; or
 - 12.3.2 the value of a series of official orders to be issued to or formal contracts to be made with the same external organisation where such official orders or formal contracts relate to the same scheme; or
 - 12.3.3 the aggregate value of call-offs, draw-downs or other similar arrangements to be made against:
 - 12.3.3.1 any official order to be issued to or formal contract to be made with the external organisation; or
 - 12.3.3.2 a series of official orders to be issued to or formal contracts to be made with the same external organisation where such official orders or formal contracts relate to the same scheme.
- 12.4 Nothing in these Contract Procedure Rules shall prevent security arrangements in accordance with this Contract Procedure Rule 12 being put in place where the value of a scheme is estimated to be under £2,000,000 and the Corporate Director in consultation with a Legal Services Manager determines that the subject-matter of such scheme justifies the need for such security arrangements.

13 **Insurances**

- 13.1 Corporate Directors shall ensure that there is adequate and appropriate insurance cover in force during the continuance of a scheme for both the City Council and its suppliers in conjunction with the City Council's insurance officers.

14 **Consultants**

- 14.1 Where a supplier is providing consultancy services to the City Council (e.g. professional, technical, IT and managerial), Corporate Directors shall

ensure that the relevant provisions of these Contract Procedure Rules are followed and included in the terms of such supplier's appointment.

- 14.2 Corporate Directors shall ensure that the taxation procedures set out within CFP D.115 – D.128 are followed in the employment of consultants and a Use of Consultants Approval Form is completed.
- 14.3 Corporate Directors shall ensure compliance with the requirements of the Audit Commission's Checklist for commissioning and managing consultants the principles of which have been adopted by the City Council.

15 **Records**

- 15.1 Corporate Directors shall ensure that the records required by these Contract Procedure Rules are kept and securely retained.
- 15.2 For the purpose of these Contract Procedure Rules, Corporate Directors shall ensure that the relevant documentation set-out in the City Council's Retention and Disposal Schedule is securely kept and retained for at least the periods stated in such schedule.

16 **Audit Examination**

- 16.1 The authority of the City Council's Internal Audit is outlined in the City Council's Financial Regulation C.9 and further detail is outlined in CFP C.24 – C.35.
- 16.1.1 Before the final payment is certified in respect of any scheme for construction and engineering related work, such scheme and all documentation associated with it may be examined by the City Council's Internal Audit. All such documentation shall be provided to the City Council's Internal Audit within the time-scale for the ascertainment of the final payment set out in the contractual provisions relating to an official order or formal contract in respect of any scheme for construction and engineering related work.
- 16.1.2 Corporate Directors shall ensure that a copy of the final payment certificate in respect of any scheme for construction and engineering related work is provided to the City Council's Internal Audit at the time it is issued.
- 16.1.3 The City Council's Internal Audit may, at any time, examine any scheme and all associated documentation for goods, materials or services.
- 16.1.4 Where applicable, Corporate Directors shall ensure that each supplier invited to provide a quotation or submit a tender for any scheme be notified at quotation or tender preparation stage that such scheme and all documentation associated with it may be examined by the City Council's Internal Audit.

