



Additional / To Follow Agenda Items

This is a supplement to the original agenda and includes reports that are additional to the original agenda or which were marked 'to follow'.

Nottingham City Council Standards and Governance Committee

Date: Thursday, 22 June 2023

Time: 4.00 pm

Place: Ground Floor Committee Room - Loxley House, Station Street, Nottingham, NG2 3NG

Governance Officer: Laura Wilson **Direct Dial:** 0115 8764312

Agenda	Pages
5 Amendments to the Constitution	3 - 42

This page is intentionally left blank

Standards and Governance Committee – 22 June 2023

Title of paper:	Amendments to the Constitution	
Director(s)/ Corporate Director(s):	Director of Legal and Governance	Wards affected: All
Report author(s) and contact details:	Jane Garrard, Senior Governance Officer jane.garrard@nottinghamcity.gov.uk	
Other colleagues who have provided input:	Steve Oakley, Head of Procurement Dawn Cafferty, Commercial Systems and Strategy Manager	
Date of consultation with Portfolio Holder(s) (if relevant)	Not applicable	
Does this report contain any information that is exempt from publication? No		
Relevant Council Plan Outcome:		
Green, Clean and Connected Communities	<input type="checkbox"/>	
Keeping Nottingham Working	<input type="checkbox"/>	
Carbon Neutral by 2028	<input type="checkbox"/>	
Safer Nottingham	<input type="checkbox"/>	
Child-Friendly Nottingham	<input type="checkbox"/>	
Living Well in our Communities	<input type="checkbox"/>	
Keeping Nottingham Moving	<input type="checkbox"/>	
Improve the City Centre	<input type="checkbox"/>	
Better Housing	<input type="checkbox"/>	
Serving People Well	<input checked="" type="checkbox"/>	
Summary of issues (including benefits to citizens/service users): The Committee is asked to consider, and recommend to Council, proposed amendments to Article 15 – Councillor Code of Conduct and Article 18 – Contract Procedure Rules of the Constitution.		
Recommendation(s):		
1	To recommend to Council that it amends Article 15 – Councillor Code of Conduct of the Constitution to replace the Corporate Director for People with the Chief Executive as the individual who can designate training as mandatory.	
2	To recommend to Council that it approves a revised Article 18 – Contract Procedure Rules of the Constitution, as set out in Appendix A.	

1. Reasons for recommendations

1.1 The Constitution sets out how the Council conducts its business including how decisions are made, who can make them and what rules and procedures must be followed. It is therefore important that it is up-to-date, accurate and reflects legislative and good practice requirements.

2. Other options considered in making recommendations

2.1 Not to amend the Constitution. This option was rejected because the Council needs to have a Constitution that is fit for purpose and the proposed amendments support delivery of that objective.

3. **Consideration of Risk**

3.2 The proposed clarification of procedures for procuring and awarding contracts reduces the risk of non-compliance with relevant procurement legislation and potential challenge.

4. **Background (including outcomes of consultation)**

4.1 The Constitution describes how the Council conducts its business including how decisions are made, who can make them and what rules and procedures must be followed. It also outlines the roles and responsibilities of officers and councillors.

4.2 It is the responsibility of Council to adopt and amend the Constitution. It is a role of the Standards and Governance Committee to ensure that the Council's governance arrangements, in particular its Constitution, are fit for purpose and support the Council in making effective, well-informed and accountable decisions. It can make recommendations to Council regarding amendments to non-executive aspects of the Constitution.

4.3 The current Constitution can be viewed online via the following link: [Nottingham City Council's Constitution - Nottingham City Council](#)

4.4 This report proposes amendments to two Articles of the Constitution – Article 15 – Councillor Code of Conduct and Article 18 – Contract Procedure Rules.

4.5 **Article 15 – Councillor Code of Conduct**

It is proposed to amend paragraph 15.42 Local Provisions of Article 15 so that it is the Chief Executive rather than the Corporate Director for People who can designate training as mandatory. This amendment is proposed because mandatory training could relate to any area of Council business and not just those relating to People Services.

4.6 **Article 18 – Contract Procedure Rules**

Following the introduction of the Council's new operating model for Commercial, Procurement and Contract Management, several amendments to Contract Procedure Rules are proposed. These update terminology and responsibilities to reflect the new model, introduce a new oversight process and clarify some existing procedures.

4.7 There are seven substantial changes:

- a) Inclusion of the Commercial Oversight Board approval route for high risk/value projects (18.11 & 18.53), for improved corporate oversight of commercial activity and management of risk.
- b) Introduction of a rule specifying procedures for below-threshold concession contracts (18.20). This states turnover values above which a quotation or tender process is required. A competitive process improves value for money outcomes from these contracts.
- c) Introduction of a rule covering below-threshold contracts meeting the 'Teckal' criteria (18.31). These are exempted from competitive procedures.

- d) Amended terminology and additional detail on the Delivery Model Assessment (former 'make-or-buy') process (18.21-18.29). This introduces periodic review of services overseen by the Commercial Oversight function, and completion of a Delivery Model Assessment, before developing or extending in-house provision.
- e) Introduction of processes for managing Accreditation Schemes/Any Qualified Provider Frameworks (18.36-40). Specific to the health and care sector, this specifies circumstances under which non-competitive accreditation schemes may be established. i.e.: where a) the Council has no choice/discretion over service provider, b) an external regulatory body determines qualification of providers and c) all qualified providers are admitted.
- f) Addition of the Negotiated procedure as a recognised procurement route with appropriate authority for above-threshold contracts. Use of this procedure is to be recorded using the Exemptions process (18.65, 18.94, 18.95 and Exemptions form)
- g) Addition of statement that where we are unable to estimate the value of a scheme we must assume that the relevant 'above-threshold' procedure applies (18.65) – reflects recent change to Central Government guidance.

4.8 In addition, there are minor amendments which clarify current practice, these are detailed in the amendments log set out as Appendix B and include:

- updates to job titles and terminology to align to the new operating model;
- clarity of existing procedures/governance including requirement for formal approval to spend prior to procurement, responsibility for contract management, added references to Dynamic Purchasing Systems and the 'Light Touch' regime;
- removal of reference to 'Use of Consultants' Form which is no longer in use and now part of the delegated decision-making process; and
- addition to the section on extension and variation of contracts to refer to below-threshold arrangements, reflecting current practice.

*Note: 'above-threshold' and below-threshold' refer to the relevant monetary thresholds above which procedures detailed in the Public Contracts Regulations 2015, Concession Contracts Regulations 2016 and Utilities Regulations 2016 apply.

5 **Finance colleague comments (including implications and value for money)**

5.8 There are no direct costs/ savings involved so in that respect no financial implications. This does not apply to decisions made as a result of these changes.

Nishil Rabheru, Strategic Finance Business Partner - 16 June 2023

6 **Legal colleague comments**

6.8 The recommendations contained in this report raise no significant legal issues and are supported. In terms of the proposed amendment to Article 15 it is important that the ability to delegate mandatory training is given a wider remit than currently exists. As far as the amendments to Article 18 are concerned these proposals have been fully reviewed by the Head of Procurement and reflect existing, and proposed, changes in the Council's arrangements as well as up-dating the Contract Procedure Rules to reflect current recommended practice and issued guidance.

Malcolm R. Townroe, Director of Legal and Governance – 16 June 2023

7 Other relevant comments

7.8 None – The Head of Procurement has led on the revision of Contract Procedure Rules and the recommendation of proposed amendments.

8 Crime and Disorder Implications (If Applicable)

8.8 Not applicable

9 Social value considerations (If Applicable)

9.8 Not applicable

10 Regard to the NHS Constitution (If Applicable)

10.8 Not applicable

11 Equality Impact Assessment (EIA)

11.8 Has the equality impact of the proposals in this report been assessed?

No



An EIA is not required because the amendment of the Constitution does not involve a new or changing policy or service. Equality, diversity and inclusion considerations have been explicitly built into the decision making processes in the Constitution.

12 Data Protection Impact Assessment (DPIA)

12.8 Has the data protection impact of the proposals in this report been assessed?

No



A DPIA is not required because the amendment of the Constitution does not involve the collection or transfer of data.

13 Carbon Impact Assessment (CIA)

13.8 Has the carbon impact of the proposals in this report been assessed?

No



A CIA is not required because the amendment of the Constitution does not have any significant carbon impact.

14 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

14.8 None

15 Published documents referred to in this report

15.8 Nottingham City Council Constitution



Nottingham

City Council

Constitution

Article Eighteen: Contract Procedure Rules

Article Eighteen: Contract Procedure Rules

18.1 **Compliance**

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.

18.2 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 purchase/procure works, supplies or services under a contract. They must take all necessary legal, financial and professional advice to ensure they comply with these Contract Procedure Rules. These Contract Procedure Rules must be followed in consultation with and in accordance with any guidance provided by the Council's Procurement Team.

18.3 Where the Council provides any financial support to an organisation in delivery of their services and **does not receive a direct benefit in return; for example the service is provided purely for community benefit and not for or on behalf of the Council**, this may be considered a grant rather than a contract for works, supplies or services and may not be subject to these Contract Procedure Rules. Legal Services can advise on the status of grants and advice should be taken if in doubt. If legal services determine that a grant is not appropriate, then these Contract Procedure Rules must be complied with.

18.4 Every City Council employee must ensure that they are aware of and observe the provisions of Article 16 – Employee Code of Conduct.

18.5 The Corporate Directors and the Director for Public Health shall ensure that the City Council complies with the statutory obligation to secure Best Value and that the City Council complies with all other legislation in force at the time.

18.6 These Contract Procedure Rules must be read in conjunction with the City Council's Procurement Strategy and any specific guidance issued by the Procurement Team.

18.7 Corporate Directors and the Director for Public Health **must use the City Council's e-tendering system** to procure works, supplies or services unless a departure from that process is expressly given by the Head of Procurement or nominated representative.

18.8 **Best Value**

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.

- 18.9 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.
- 18.10 Corporate Directors and the Director for Public Health must adopt the Quotation/Tender Templates and Evaluation Models recommended by the Procurement Team, to ensure compliance with the requirements of these Contract Procedure Rules. Quotations and tenders must only be sought once the spend approval and procurement strategy for the requirement have been formally approved by the relevant decision maker/body, except for emergency circumstances which are exempt from Contract Procedure Rules as set out in 18.94.
- 18.11 The commercial strategy for key and high risk decisions must be agreed by Commercial Oversight Board, or its successor, prior to seeking formal approval to spend. Assessment of risk for all contracts valued £100k and above will be carried out in consultation with the Head of Procurement or nominated representative, using a standard template, as set out in 18.53.
- 18.12 **Aggregation of contract and framework value**
The value of a contract is the estimated total amount payable (net of VAT) over the life of the contract (including extensions) as set out explicitly in any procurement documents.
- 18.13 Where framework agreements and/ or dynamic purchasing systems are created, the value is calculated as the total estimated value of all call off contracts envisaged over the life of the framework or dynamic purchasing agreement (including extensions).
- 18.14 In the case that framework agreements and/ or dynamic purchasing systems are created for other local authorities or public bodies to use, the value for any procurement documents should be the total value of estimated usage across all public bodies named. However, for the purposes of internal approval, the value of the contract stated on any delegated decision or executive approval will be the expected expenditure of the Council only and should not include external public bodies.
- 18.15 Requirements must not be artificially sub-divided into two or more separate requirements with the intention of avoiding the application of these Contract Procedure Rules or the obligations of the UK procurement legislation.
- 18.16 In the event that multiple departments are procuring the same works, supplies or services,, the expenditure should be consolidated and procured via the same contract to maximize economies of scale and avoid disaggregation of contracts risking breach of procurement regulations. In this event, Corporate Directors and the Director for Public Health should ensure that the department with the highest proportion of total expenditure is appointed as the lead department and is therefore responsible for obtaining formal approval, signing off the procurement documentation and completing any associated documents such as the Data Protection Impact Assessment. The lead department will also be

responsible for managing the contract once let, ensuring provider performance is managed in line with the terms of the contract.

18.17 Concession contracts

Where the Council provides an opportunity to a supplier to exploit the delivery of works, goods or services and the supplier receives benefit or payment for those directly from a third party rather than the Council paying for them directly, this may be a concession contract which requires a procurement process in line with the Concession Contracts Regulations 2016 (CCR).

18.18 A concession contract must involve the transfer of an operating risk to the supplier, the risk transferred must involve real exposure to the market and the services must be for the benefit of the Council or its residents.

18.19 The value of a concession contract, subject to the CCR, is the estimated total turnover that the supplier can generate in consideration for the works, goods and services over the duration of the contract, net of value added tax, as estimated by the Council. Legal Services, in consultation with Procurement colleagues can advise if a contract is a concession contract which falls within the CCR.

18.20 Where the value of a concession contract is below threshold for CCRs only those with an estimated total turnover in excess of £750k need to comply with the need to tender as laid out in 18.65 (the total turnover value is for the life of the contract or 5 years whichever is the longest). For turnover values between £100k and £750k three quotes should be sought in line with 18.65. For turnover values below £100k over the lifetime of the contract Corporate Directors or the Director of Public Health can directly award to a supplier.

18.21 Delivery Model Assessment (Make or Buy)

The Council's Procurement Strategy states: "Procurement is the process of acquiring the goods, services and works an organisation needs.... Procurement also involves options appraisal and 'make or buy' decisions, which may result in the provision of services in-house where appropriate." A relevant DMA must be included in the commercial strategy for all works, supplies and services.

A joined up, strategic, Delivery Model Assessment (DMA) will be periodically undertaken for all Council services, led by the Strategic Commercial Oversight function. Any exception to an agreed DMA must be agreed by the Commercial Oversight Board or its successor.

18.22 Before the Council considers developing or extending an internal provision, a DMA must be completed and prove that the internal service provides best value for money.

18.23 Arrangements for internal provision should be periodically reviewed through a DMA process to ensure that they do not become out-of-date and continue to be the most suitable arrangements, taking into account, for example, that:

- requirements change over time and may no longer be reflected in the agreed service (eg in terms of quality, quantity or range of options)

offered)

- innovations or alternatives may have been developed since the original agreement
- new entrants to a market could potentially offer greater value than the in-house alternative.

The regularity of these reviews will depend upon the degree of change in the market, the degree of change in the requirements and the flexibility of the existing agreement.

18.24 An externally provided solution may provide better value for money for the Council because:

- the extra cost required to provide the service internally is less than the price available externally (including any potential TUPE costs if currently provided externally, and/or break costs in the terms of PFI contracts)
- there is insufficient capacity (including any necessary specialism) to provide the service in-house
- the quality that can be offered internally does not meet the needs of the internal customer.

18.25 Inappropriate reasons for contracting out (or not using internal services) include:

- unsolved management problems (including issues of ‘long-standing resentment or mistrust of one group of staff by another’)
- ability to transfer risk (as this will be built into prices)
- a legacy of capital starvation (as prudential borrowing can rectify this).

18.26 The expectation is that in most cases, the service managers from the customer and provider sections will discuss and agree if any of the criteria in paragraph 18.24 are met and thus if it is appropriate to externally procure. If the parties cannot agree it should be referred to the Procurement Team who will apply and keep updated a specific process and route of escalation for these types of decisions.

18.27 The Chief Financial Officer is responsible for updating and reviewing procedures and processes for resolving any disputes within the DMA process between departments.

18.28 Corporate Directors are responsible for checking whether in-house provision is an alternative before commencing purchasing or tendering activities. This decision should ideally be made six months before the expiry of the existing contract so that adequate time is allowed for the re-tendering process. If a robust business case for delivering the service internally has not been approved at that point, the procurement should proceed to ensure a compliant contract is in place at all times.

18.29 Where the Council chooses to deliver services itself (‘in-house’) such arrangement will not be subject to these Contract Procedure Rules.

18.30 Nottingham City Council owned companies – Teckal (Local Authority Trading Company)

When buying services the Council can consider entering into arrangements with one of its subsidiary companies if it meets certain requirements falling under the UK procurement legislation (known as the ‘Teckal’ exemption).

18.31 Arrangements falling within the Teckal exemption are excluded from these Contract Procedure Rules regardless of value. The Council will still be required to enter into a contract with the subsidiary company and approval will be required to enter into such contract and demonstrate best value.

For contracts below the thresholds of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 or otherwise not subject to the Public Contracts Regulations, with a company that would otherwise satisfy the Teckal exemption, the Council will consider these arrangements exempt from these Contract Procedure Rules.

18.32 Legal services should be consulted to advise whether the Teckal exemption applies and to provide appropriate support with the contract

18.33 Co-operation with other public bodies

In limited circumstances it may be possible for the Council to co-operate with other public bodies without undertaking a procurement process.

18.34 As a minimum co-operation between the Council and another public body must have the aim to ensure that the public services they have to perform are provided with a view to achieving objectives they have in common (including the achievement of value for money) and that the co-operation is governed solely by considerations relating to the public interests.

18.35 Legal Services should be consulted to advise whether co-operation would be permitted for the proposed arrangement, in which case these Contract Procedure Rules will not apply.

18.36 Accreditation Schemes / Any Qualified supplier

Where an arrangement is deemed to be a supplier accreditation scheme or ‘Any Qualified Supplier’ scheme and is not a procurement as defined by the Public Contracts Regulations 2016, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016, the procedural requirements of these Contract Procedure Rules do not apply in so far as they relate to the selection of suppliers. There is no requirement for exemption from the Contract Procedure Rules in accordance with Article 18.94 in order to award contracts.

18.37 The key principles to be applied in determining whether a scheme is an accreditation scheme and not a procurement are:

- Lack of any choice or discretion on the part of the Contracting Authority in the selection of which organisation/s are contracted

- The assessment of whether an organisation can qualify is determined by a separate regulatory body
- Openness of the scheme to qualified providers without limit or restriction of access

18.38 The Procurement team and Legal Services should be consulted in making this determination and if Legal Services determine that the arrangement is a procurement and not an accreditation scheme then the requirements of these Contract Procedure Rules must be complied with.

18.39 When awarding contracts under an accreditation scheme, Corporate Directors and the Director for Public Health shall ensure that the most suitable arrangement is secured, the details are recorded in writing and appropriate approval is sought for the Council's financial commitment under any of these arrangements. The obligations of these Contract Procedure Rules relating to best value must be complied with to ensure the economy, efficiency and effectiveness in the use of the Council's resources and to secure the optimum combination of whole life costs and benefits to meet customer requirements.

18.40 When contracting under an accreditation scheme, the provisions of these Contract Procedure Rules relating to contracts and orders, transparency (including publishing on the contracts register) and supplier performance must be complied with.

18.41 Selection of Suppliers

Corporate Directors and the Director for Public Health shall ensure compliance with the City Council's Corporate Contracts currently in force to procure works, supplies or services. These are arrangements established by the City Council's Head of Procurement or nominated representative.

18.42 Only where a corporate contractual arrangement has not been established can the Corporate Directors and the Director for Public Health ensure that quotations and tenders are invited in consultation with the Head of Procurement or nominated representative. Any quotation or tender process must comply with these Contract Procedure Rules and the UK Public Procurement legislation - which is mandatory for any scheme which has a procurement requirement falling within the UK public procurement legislation and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant UK threshold figure for the time being in force.

18.43 Quotation or tender processes must comply with one of the following approaches:

- Joint procurement arrangements/dynamic purchasing systems+/frameworks/purchasing consortia arrangements established by other contracting authorities
- For "light touch" services (ie: Social and Other Specific Services identified in Schedule 3 of the Public Contract Regulation 2015) accreditation or any qualified provider process
- Use of frameworks from organisations such as Crown Commercial Services, the Eastern Shires Purchasing Organisation (ESPO) etc

- Suitable suppliers derived from a competitive selection process as set out in 18.64 conducted in consultation with the Head of Procurement or nominated representative and where necessary, also with the Head of Legal and Governance.

18.44 Corporate Directors and the Director for Public Health are encouraged to adopt a collaborative approach to procurement, where appropriate.

18.45 When forming a partnership with a supplier a partner must be obtained through a competitive selection process which can be demonstrated by using any of the arrangements set out in paragraph 18.65 of these Contract Procedure Rules.

18.46 UK Public Procurement including Framework Agreements

Corporate Directors and the Director for Public Health shall ensure that the letting of a scheme which has a procurement requirement falling within the UK procurement legislation and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant UK threshold figure for the time being in force, complies with the requirements of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 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.

18.47 Corporate Directors and the Director for Public Health shall ensure that any scheme which has a procurement requirement falling within the UK procurement legislation and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant UK threshold figure for the time being in force is referred to the City Council's Head of Procurement or nominated representative to ensure compliance with the Public Contracts Regulations 2016, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 and any re-enactment(s) of them.

18.48 Corporate Directors and the Director for Public Health shall ensure that the appropriate advertisements are placed on Contracts Finder and/or Find a Tender and other relevant publications in conjunction with the City Council's Procurement Manager. The City Council's Head of Procurement or nominated representative shall maintain a register of such advertisements so placed.

18.49 Corporate Directors and the Director for Public Health shall ensure compliance with the requirements of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 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 UK procurement legislation and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant UK threshold figure for the time being in force (refer to paragraph 18.45 of these Contract Procedure Rules for the use of framework agreements established by other contracting authorities).

18.50 Corporate Directors and the Director for Public Health shall have the discretion, in consultation with the City Council's Head of Procurement or nominated representative, to adopt the requirements of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 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 UK procurement legislation 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 UK threshold figure for the time being in force, otherwise the requirements of these Contract Procedure Rules shall be complied with.

18.51 Corporate Directors and the Director for Public Health 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. Note: More information on the Public Contracts Regulations 2015, Utilities Contracts Regulations 2016 and Concessions Contracts Regulations 2016 can be found at <https://www.gov.uk/guidance/public-sector-procurement-policy>.

18.52 Joint Procurement Arrangements/ Dynamic Purchasing Systems/ Frameworks/ Purchasing Consortia

To fulfil their requirements, Corporate Directors and the Director for Public Health 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 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 and any re-enactment(s) of them, these arrangements being:

- joint procurement arrangements with other local authorities or other contracting authorities
- dynamic purchasing systems established by other contracting authorities
- framework arrangements established by contracting authorities such as the East Midlands Property Alliance (EMPA)
- purchasing consortia established by contracting authorities such as Crown Commercial Services and the Eastern Shires Purchasing Organisation (ESPO).

18.53 For requirements above £100k the risk assessment process referred to in 18.11 will need to be undertaken. Where high risk or a key decision, the Commercial Strategy must be approved at the relevant Commercial Oversight Board or its successor.

18.54 Any requirement of the City Council involving the procurement of works, supplies 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.

- 18.55 Dynamic Purchasing Systems and Framework arrangements established by contracting authorities must be evaluated and approved by the Head of Procurement or nominated representative who will confirm with a Legal Services Manager before agreeing for use. A list of approved frameworks will be held by Procurement which can be used by Directors once approval has been given to the Commercial Strategy for each project in line with 18.53
- 18.56 Any requirement of the City Council involving the procurement of works, supplies 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.
- 18.57 In all cases where the fulfilment of requirements using arrangements referred to in paragraph 18.52 of these Contract Procedure Rules is being considered, Corporate Directors and the Director for Public Health must be satisfied that the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 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.
- 18.58 Corporate Directors and the Director for Public Health shall ensure that the proposed terms and conditions that are to apply are adequate and appropriate and where necessary shall refer them to the Head of Procurement (or nominated representative) or Head of Legal and Governance 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 18.52 of these Contract Procedure Rules.
- 18.59 Corporate Directors and the Director for Public Health shall ensure that the terms and conditions entered into are complied with.
- 18.60 Corporate Directors and the Director for Public Health shall ensure that where following the call-off procedure to use a framework agreement, 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 paragraphs 18.65 – 18.78 of these Contract Procedure Rules.
- 18.61 **Vetting of Suppliers**
Corporate Directors and the Director for Public Health shall ensure that suppliers are vetted in consultation with the Head of Procurement or nominated representative and in accordance with the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 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 and the Director for Public Health shall ensure that suppliers meet adequate and appropriate standards of health and safety.

18.62 Corporate Directors and the Director for Public Health shall ensure that all suppliers of construction and engineering related work, have adopted the City Council's Construction Charter or its successor, and have endorsed its principles and agreed to implement its actions, before each scheme is let.

18.63 **Purchasing Cards**

Corporate Directors and the Director for Public Health shall:

- only use the City Council's Purchasing Card Scheme as outlined in The Purchase Card Guidance as part of their procurement regime
- ensure that purchasing cards are used:
 - in the procurement process for works, supplies services where arrangements for their use has been made in conjunction with the City Council's Head of Procurement or nominated representative
 - only for items below the single transaction limit of £1,000. Any transactions over this amount shall be processed by purchase order or in line with the City Council's Payment Policy. Any officers who require a transaction limit above this value must receive approval from the Head of Procurement or a nominated representative in support of procurement
 - over the internet on secure sites and in accordance with the guidance provided in The Purchase Card Guidance
 - in other circumstances agreed with the Chief Finance Officer.

18.64 There shall be no artificial sub-division of spend in order to bring a single transaction below the £1,000.00 limit. The Head of Procurement or a nominated representative will investigate any concern of sub-division of payments.

18.65 **Invitations to Suppliers**

Procurement of schemes for works, supplies and services (including schemes involving construction and engineering related work) (a summary is attached at the end of these Contract Procedure Rules):

- Where the estimated value of a scheme over the whole life of the scheme is between £25,000 and £100,000 (between £5,000 and £50,000 for Schools), Corporate Directors and the Director for Public Health shall refer to guidance and templates provided by the Procurement Team and make every effort to obtain at least 3 quotations in writing, except where corporate contracts have been established by the City Council's Head of Procurement or nominated representative or where framework agreements or other arrangements have been approved for use pursuant to 18.55. Corporate Directors and the Director for Public Health, however, may elect to seek tenders in lieu of quotations.
- Where the estimated value of a scheme over the whole life of the scheme exceeds £100,000 (£50,000 for Schools), Corporate Directors and the Director for Public Health shall seek support from the Procurement Team and make every effort to obtain at least 3 tenders in writing, except where corporate contracts have been established by the City Council's Head of

Procurement or nominated representative or where framework agreements or other arrangements have been approved for use pursuant to 18.55.

- In specific exceptional circumstances, for procurement valued above the relevant threshold stated in the Public Contract Regulations 2015, there will be occasions where a competitive quotation or tender process is not possible and direct negotiation of a contract is permissible. Where this is identified the Corporate Director of Finance and Resources can, in Consultation with the Head of Legal and Governance, authorise the subsequent contract award provided a record is kept of the rationale for the decision via the exemptions process attached at the end of this Article. Under no circumstances will retrospective approval be allowed.
- In all circumstances where a contract value cannot be estimated it must be assumed that the requirement is above the relevant Public Contracts Regulation regime threshold and a compliant process undertaken accordingly

18.66 Quotations and Tenders as detailed in 18.65 above need not be sought:

- if the estimated value of a scheme over the whole life of the scheme is less than £25,000 (£5,000 for Schools)
- in the event of an emergency (see Financial Regulations)
- when the arrangement is for in-house delivery by Nottingham City Council or a subsidiary company in accordance with the Teckal exemption as per paragraphs 18.30 – 18.32 above
- when the arrangement is through co-operation with another public body in accordance with paragraphs 18.33 – 18.35 above.

18.67 Corporate Directors and the Director for Public Health, however, shall ensure that the most suitable arrangement is secured for the City Council and the details are recorded in writing and appropriate approval is sought for the Council's financial commitment under any of these arrangements.

18.68 Corporate Directors and the Director for Public Health shall ensure that the City Council's e-tendering system shall be used when inviting and receiving quotations and tenders electronically, unless the express approval of the Head of Procurement or nominated representative is given to dispense with the use of the system in advance of any process commencing.

18.69 In consultation with the Head of Legal and Governance, the Head of Procurement shall ensure that the City Council's e-tendering system complies with the requirements of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 and any re-enactment(s) of them.

18.70 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 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 and any re-enactment(s) of them, otherwise the requirements of these Contract Procedure Rules shall be complied with.

- 18.71 Corporate Directors and the Director for Public Health 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.
- 18.72 Corporate Directors and the Director for Public Health shall ensure that each individual scheme be packaged to secure Best Value for the City Council.
- 18.73 Corporate Directors and the Director for Public Health 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.
- 18.74 Corporate Directors and the Director for Public Health 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 Procurement Team.
- 18.75 Corporate Directors and the Director for Public Health shall ensure that a realistic period be stipulated in the invitations to suppliers to provide quotations or to submit tenders, and is in line with UK Public Contracts Regulations 2015 or where these need not be applied a minimum period of ten working days allowed for a response. This period may be reduced provided the special circumstances are recorded.
- 18.76 Corporate Directors and the Director for Public Health shall ensure that invitations to suppliers to provide quotations or to submit tenders for works, supplies or services, incorporate:
- the requirements set out in these Contract Procedure Rules appropriate to the circumstances of the invitation
 - a specification that describes the City Council's requirements in sufficient detail to enable the submission of competitive offers
 - the nature and quantity of the works, supplies or services that is required
 - the time, or times, within which the works or services are to be performed or the goods and materials are to be delivered
 - 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
 - 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
 - a notification that the City Council is not bound to accept the lowest or any quotation or tender for a specific scheme
 - a Certificate of Bona Fides
 - a Form of Tender

- adequate and appropriate provisions regarding insurances, health and safety, equality and diversity, data protection and freedom of information
- 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 18.104 of these Contract Procedure Rules)
- 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
- any other relevant items that are considered necessary.

18.77 Corporate Directors and the Director for Public Health shall ensure that the information contained in any invitation to provide quotations or to tender is issued to each supplier at the same time. Any supplemental information must be given on the same basis.

18.78 Corporate Directors and the Director for Public Health 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.

Procedures for Quotation and Tender Discussion and/or Clarification

18.79 Pre-Quotation and Pre-Tender Discussion

Discussion with potential suppliers prior to inviting 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 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 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.

18.80 Post-Quotation and Post-Tender Clarification

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 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 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 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.

18.81 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.

18.82 Notification

Corporate Directors and the Director for Public Health 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 and the Director for Public Health shall notify the Head of Procurement (or nominated representative) or the Head of Legal and Governance of the discussion and/or clarification and actions taken, at the earliest opportunity.

18.83 Acceptance of Quotations and Tenders

Whenever the City Council's e-tendering system is not used as per 18.7, Corporate Directors and the Director for Public Health 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 (eg value, price, delivery period, or other significant issues unique to each quotation).

18.84 Subject to any legal obligations on the City Council, Corporate Directors and the Director for Public Health 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.

18.85 Corporate Directors and the Director for Public Health shall ensure that quotations and tenders received are adequately and appropriately evaluated in accordance with the Quotation/Tender Evaluation Model recommended by the Procurement Team or set out in Procurement Team guidance

18.86 Corporate Directors and the Director for Public Health 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 Head of Procurement or nominated representative for a decision.

18.87 Corporate Directors and the Director for Public Health 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 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 and any re-enactment(s) of them.

18.88 Corporate Directors and the Director for Public Health 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.

- 18.89 Corporate Directors and the Director for Public Health 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 the Director for Public Health or authorised signing officer(s).
- 18.90 Corporate Directors and the Director for Public Health shall ensure that suppliers whose quotation or tender for a specific scheme is not accepted be notified and given the name/s of the successful tenderer/s and reasons for the decision including the characteristics and relative advantages of the successful tender, and the score (if any) obtained by the recipients of the notice and the winner/s. Where a scheme falls within the UK procurement legislation and has a value or (if made up of a series of related schemes) an aggregated value likely to exceed the relevant UK threshold figure for the time being in place, the notification of the decision must comply with the requirements of the Public Contracts Regulations 2015, the Utilities Regulations 2016 or the Concession Contracts Regulations 2016 as applicable.
- 18.91 Each scheme shall be let on the authority of a Corporate Director or the Director for Public Health, following a spend decision having been taken in line with 18.10 and 18.11 by an appropriate decision-maker (i.e. for executive business a Corporate Director or the Director for Public Health (or other specifically delegated officer), Portfolio Holder/Leader or Executive Board/Committee) in accordance with the currently prevailing financial limits.
- 18.92 Notwithstanding any current requirements for reporting of decisions, Corporate Directors and the Director for Public Health shall ensure that a quarterly report be forwarded to the Chief Finance Officer which sets out all schemes exceeding £100,000 (£50,000 for Schools) let under the authority of such Corporate Directors and the Director for Public Health in the preceding quarter. Any special circumstances (eg emergency and/or operational action) or items of an exceptional nature must be included in the report.
- 18.93 Corporate Directors and the Director for Public Health 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.
- 18.94 **Request for an Exemption from Procurement Procedures**
Corporate Directors or the Director of Public Health, on application to the Chief Finance Officer, may waive, suspend or change any provision of these Procedures, which are not part of the Financial Regulations. The Chief Finance Officer shall report any such waiver, suspension or change on an annual basis to the Audit Committee. In these circumstances the initiating Director must use a Request for an Exemption from Procurement Procedures Form as attached at the end of this Article, this must be sent to the Head of Procurement or nominated representative. Under **no** circumstances will a retrospective exemption be approved.

18.95 In specific exceptional circumstances there will be occasions where an award of a contract is allowed within Public Contract Regulations 2015 where a competitive quotation or tender process is not possible. This should be approved and recorded in accordance with 18.65 via the exemptions process attached at the end of this Article.

18.96 Orders and Contracts

All schemes regardless of value 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 18.94 of these Contract Procedure Rules.

18.97 Corporate Directors and the Director for Public Health 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 18.56 – 18.58 of these Contract Procedure Rules.

18.98 Corporate Directors and the Director for Public Health shall ensure that official orders are also raised through the City Council's main financial system:

- 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
- 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.

18.99 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.

18.100 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

18.101 The Director of Legal and Governance, and Head of Legal and Governance, have authority to make contracts under seal. Simple contracts may only be made in accordance with paragraph 18.118 of these Contract Procedure Rules.

18.102 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 for Legal and Governance.

18.103 In exceptional circumstances, where an official order has been raised electronically, ie by telephone or e-mail, Corporate Directors and the Director

for Public Health 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".

18.104 Where any scheme has a value of £2,000,000 or more:

- the Director of Legal and Governance or the Head of Legal and Governance 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 authorised by hand by the Director of Legal and Governance or the Head of Legal and Governance
- the Head of Legal and Governance (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 or the Director for Public Health 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 signed by at least two signing officers.

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

- the Corporate Director concerned or the Director for Public Health 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 the Head of Legal and Governance and be signed by at least one authorised officer
- the Head of Legal and Governance (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 or the Director for Public Health shall ensure that a formal contract under seal relating to the scheme is made in such terms that have the prior approval of the Head of Legal and Governance and in accordance with paragraph 18.104 of these Contract Procedure Rules
- Corporate Directors and the Director for Public Health 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 and the Director for Public Health are satisfied that their officers have received relevant financial training as approved by the Chief Finance Officer (Financial Regulations) and the relevant form has been completed.

Corporate Directors and the Director for Public Health shall supply the names and signatures of signing officers together with the corresponding signing/ authorising limits to the Chief Finance Officer. Corporate Directors and the Director for Public Health 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.

18.106 Corporate Directors and the Director for Public Health shall ensure that:

- 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
- no official order be issued or formal contract made for work, goods, materials or services for the private use of any person
- only official order forms in a format approved by the Chief Finance Officer be used
- 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 via the selection of the relevant Contract Purchase Agreement (CPA) when raising a purchase order. Reference to the CPA on a purchase order ensures those specific terms apply to the purchase, rather than the Council's standard purchase order terms of agreement
- 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 works, supplies or services (as the case may be) which form the subject-matter of the contract
- each official order or formal contract contains adequate and appropriate (and in addition, the applicable requirements of paragraph 18.77 of these Contract Procedure Rules):
 - price adjustment provisions
 - anti-collusion provisions
 - anti-corruption provisions
 - anti-fraud provisions
- 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
 - 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
 - c) has been convicted of any offence under the Bribery Act 2010

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.”

- where applicable, and with the advice of the Head of Legal and Governance, 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 of these Contract Procedure Rules):
 - the cancellation of such official order or formal contract
 - the making of retentions
 - 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, the Director for Public Health or authorised issuing officers

- 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
- where the terms of any official order or a formal contract are changed, such amendment(s) be initialled by Corporate Directors, the Director for Public Health 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
- as soon as possible after any official order has been made, a register be kept of such orders made
- 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.

18.107 **Transparency obligations**

Corporate Directors and the Director for Public Health shall ensure that as soon as possible after any formal contract has been made, the Chief Finance Officer and Head of Procurement or nominated representative are notified and a register be kept of such contracts made.

18.108 All formal contracts must be notified to the Procurement Team and recorded on the Council’s Contracts Register.

- 18.109 The award of all contracts of value exceeding the relevant UK procurement threshold for the time being in force, must within a reasonable time, be published nationally in accordance with the requirements of the of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 or the Concessions Contracts Regulations 2016. This obligation applies to contracts awarded regardless of whether they fall within the UK procurement legislation or are of a value likely to exceed the relevant UK threshold figure for the time being in force.
- 18.110 **Amendments and variations to contracts** 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 that any such variation complies with the requirements of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concessions Contracts Regulations 2016 and any re-enactment(s) of them, Best Value continues to be secured for the City Council and is made in consultation and with the agreement of the Head of Procurement or nominated representative. In relation to contracts where the original contract is below the thresholds of the Public Contracts Regulations 2016, the Utilities Regulations 2016 and the Concessions Contracts Regulations 2016, or otherwise not covered by these Regulations, amendments and variations will be considered in accordance with the relevant Procurement legislation then the principles of the relevant legislation should be applied to any extension or variation. Any extension or variation not approved by the Head of Procurement or their nominated representative will need an exemption in line with 18.94.
- 18.111 Corporate Directors and the Director for Public Health 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.
- 18.112 Corporate Directors and the Director for Public Health 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.
- 18.113 Provision of Works, Supplies or Services by the City Council to Other Organisations: The Head of Legal and Governance must be consulted where it is contemplated that any works, supplies 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.
- 18.114 **Supplier Performance**
Corporate Directors and the Director for Public Health shall ensure that each official order or formal contract for works, supplies or services contains

adequate and appropriate provisions for supervising and monitoring supplier performance including the quality and standard of such works, supplies or services.

18.115 During the performance of an official order or formal contract for works, supplies or services, Corporate Directors and the Director for Public Health 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.

18.116 Corporate Directors and the Director for Public Health shall ensure that claims received from suppliers of works, supplies 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 the Head of Legal and Governance for consideration of the City Council's legal liability as soon as they are notified to the City Council.

18.117 Corporate Directors and the Director for Public Health shall ensure that claims made against suppliers of works, supplies or services or other external organisations be referred to the Head of Legal and Governance for consideration of the City Council's legal liability as soon as they become reasonably apparent.

18.118 Corporate Directors and the Director for Public Health 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.

18.119 **Payments**

Corporate Directors and the Director for Public Health shall ensure that payments to suppliers for works, supplies or services are certified and made in accordance with:

- the appropriate term(s) of the official order or formal contract
- Financial Regulations.

18.120 **Performance Security Arrangements**

Corporate Directors and the Director for Public Health shall ensure that procurement exercises allow for the obtaining of security for the due performance of all schemes (whether they be schemes involving supplies 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 the Head of Legal and Governance. The Head of Legal and Governance may decide that such security is not required for the procurement, in which case the following requirements shall not apply.

18.121 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 and the Director for Public Health shall ensure that:

- the need for such allowance is made clear in the tender documents
- in conjunction with a Legal Services Manager, that the terms of such security arrangements are adequate and appropriate
- 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.

18.122 For the purpose of this Contract Procedure Rule 10, the estimated value of a scheme shall be the higher value of either:

- the value of any official order to be issued to or formal contract to be made with the external organisation
- 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
- the aggregate value of call-offs, draw-downs or other similar arrangements to be made against:
 - any official order to be issued to or formal contract to be made with the external organisation
 - 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.

18.123 Nothing in these Contract Procedure Rules shall prevent security arrangements in accordance with this Contract Procedure Rule being put in place where the value of a scheme is estimated to be under £2,000,000 and the Corporate Director or the Director for Public Health in consultation with a Legal Services Manager determines that the subject-matter of such scheme justifies the need for such security arrangements.

18.124 **Insurances**

Corporate Directors and the Director for Public Health 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.

18.125 **Consultants**

Where a supplier is providing consultancy services to the City Council (eg professional, technical, IT and managerial), Corporate Directors and the Director for Public Health shall ensure that the relevant provisions of these Contract Procedure Rules are followed and included in the terms of such supplier's appointment.

18.126 Corporate Directors and the Director for Public Health shall ensure that the taxation procedures set out within CFP D.115 – D.128 are followed in the employment of consultants.

18.127 Corporate Directors and the Director for Public Health 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.

18.128 **Records**

Corporate Directors and the Director for Public Health shall ensure that the records required by these Contract Procedure Rules are kept and securely retained.

18.129 For the purpose of these Contract Procedure Rules, Corporate Directors and the Director for Public Health 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.

18.130 **Audit Examination**

The authority of the City Council's Internal Audit is outlined in the City Council's Financial Regulations and further detail is outlined in CFP C.24 – C.35.

18.131 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.

18.132 Corporate Directors and the Director for Public Health 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.

18.133 The City Council's Internal Audit may, at any time, examine any scheme and all associated documentation for works, supplies or services.

18.134 Where applicable, Corporate Directors and the Director for Public Health 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.

Contractor Thresholds

Officers should check the intranet for any changes to these thresholds. The threshold is total contract value not annual

Lifetime Contract Value	Quotation / Tenders	Exceptions
Procurement £0 - £25,000 Schools £0 - £5,000	No Formal Quotations and/or Tenders need to be sought	Corporate contracts have been established by the City Council's Head of Procurement
Procurement £25,000 - £100,000 Schools £5,000 - £50,000	Obtain at least 3 quotations in writing	<ul style="list-style-type: none"> • Corporate contracts have been established by the City Council's Head of Procurement or where framework agreements are approved for use by Procurement. • Other arrangements are legally accessible pursuant to paragraph 18.65 of the CPR's. • Corporate Directors and the Director of Public Health, however, may elect to seek tenders in lieu of quotations
Procurement £100,000 + Schools £50,000+	Obtain at least 3 tenders in writing	<ul style="list-style-type: none"> • Corporate contracts have been established by the City Council's Head of Procurement or where framework agreements are approved for use by Procurement. • Other arrangements are legally accessible pursuant to paragraph 18.65 of the CPR's.

Appendix A – Exemption from Procurement Procedures

Guidance Notes

- The following form must be completed whenever a request is made to seek an exemption from Nottingham City Council's Contract Procedure Rules
- Before seeking an exemption from the requirements to obtain tenders and quotations the Head of Procurement or their nominated representative must be consulted.

Instructions on Completing the Form

- The officer requesting the exemption should complete the attached form with all relevant information in order for a decision to be properly reached.

The form **must** be signed by the originator and the appropriate Head of Service (or above) before forwarding to the Procurement.

- The Procurement Team will record the exemption for reporting and monitoring purposes. Provide procurement rationale agreed with the relevant Category Manager prior to forwarding to the Head of Procurement.
- The Head of Procurement and the Section 151 Officer will consider the request and, where justified, will authorise it.
- Notification of rejection/approval of any request will be sent to the originator via the Head of Procurement.
- A copy of the completed and authorised form/s must be kept by the originator on the relevant project file.
- Retrospective Exemption Requests will be rejected without further consideration.
- Exemptions that contravene the UK Public Contract Regulations, 2015, Concession Regulations 2016 or the Utilities Regulations 2016 will be rejected unless evidence is provided showing the request is covered by an exception within the Regulations.

Exemption from Procurement Procedures
Request for an exemption from complying with Procurement Procedures

Section 1: Request Originator

Name:	
Signature:	
Department:	
Date:	

Section 2: Exemption Type

Please enter 'X' against whichever box applies and provide relevant supporting information under Section 5	
Exemptions; Please select the relevant exemption being relied on in this request	
The supplies, works or services are specific to the supplier and for technical reasons cannot be provided by any other supplier.	
The supplies, works or services are urgently needed for the immediate protection of life or property, or to maintain the immediate functioning of a public service for which the Council is responsible. In such cases the contract must only last as long as is reasonably necessary to deal with the specific emergency .	
The Corporate Director, in consultation with the Head of Procurement, decides that special circumstances make it appropriate and beneficial to negotiate with a single firm or that a single tender be invited and that best value for the Council can be achieved by not tendering.	

Section 3: Subject

Title for the Contract project name or types of product	
Description of Supplies, Works or Services: (please provide a full description including any written proposals that have been received)	

Section 4: Data Protection

Do the Supplies, Works or Services involve processing of personal data on behalf of the Council (i.e. processing is anything that may be done with personal data – service user, employee data etc)	Yes <input type="checkbox"/>
	No <input type="checkbox"/>
IF YES, have you liaised with the Information Compliance Team or submitted a Data Protection Impact Assessment(DPIA) for the provision of these, Supplies, Works,	Yes <input type="checkbox"/>
	No <input type="checkbox"/>

Services or does a DPIA already exist (e.g. if this is recommission of an existing service)?	
IF YES please provide details	
If NO, please seek the advice of the Information Compliance Team	

Section 5: Proposed Provider & Contract Details

Proposed Provider:	
Contract Value:	
Proposed Contract Start Date:	
Proposed Contract End Date / Duration:	
How or why has the proposed provider been selected?	
How does this proposal demonstrate Best Value?	
Do you have sufficient funds to cover this expenditure?	

Section 6: Background & Justification

Provide an overview and explain why an exemption request is necessary?
State when the need for this requirement arose?
Explain why it is not appropriate to seek alternative quotes/tenders?
What other options have been explored?
What would the impact be if this request wasn't approved?

Section 7: Forward Planning

Will there be an ongoing requirement beyond the expiry date of this request, if it is approved?

Section 8: Head of Service Agreement

Head of Service (or above):	
Name:	
Signature:	
Date:	

Section 9: Procurement Comments

Head of Procurement	
Name:	
Signature:	

Date:	
Is the value above the applicable PCR2015 threshold, requiring authorisation to award via Regulation 32?*	Yes/No
Comments:	
Recommendation:	

Section 10: Section 151 Officer & Approval / Rejection	
Section 151 Officer	
Name:	
Signature:	
Decision	Approved/Rejected
Reasons for decision:	
Subject to the following conditions.	
Date:	

If approval is given, please complete the following form to enable Procurement to complete its obligation of issuing a Contract Award Notice.

*or equivalent within the Concession Contracts Regulations 2016 or Utilities Contracts Regulations 2016.

Exemption from Direct Award Information Request

Under regulations 106, 108, 110 and 112 of the Public Contract Regulations 2015 Nottingham City Council is required to publish spend with a value of £25,000 and above on the government website [Contracts Finder](#). Following your recently approved Delegated Decision to dispense from the Councils Financial Regulations and directly award a contract, please confirm the information requested in the table below to enable the Procurement Team to fulfil the Councils legal duties. Some of this information will be captured in the Procurement Information Management System (PIMS) for internal reporting purposes only.

DDM Reference (Internal)	
Procurement Reference	CPU
Subject	
Contract Type	Service, Supply or Works
Procedure Type	Single tender action or 'Direct Award'
Description	
Contract Award Date	
Contract Start Date	
Initial Contract End Date (Internal)	
Contract Extensions (Internal)	
Maximum End Date	
Total Value	£
Supplier Name	
Supplier Postcode	
Is the supplier an SME¹?	
Is the supplier a VCSE²?	
Cashable Savings (Internal)	£
Income Generated (Internal)	£
Social Value ³ (Internal)	

¹ Small to Medium Enterprise

² Voluntary, Community and Social Enterprise

³ Social, economic or environmental benefits achieved by this contract

**Appendix B: Revisions to
Contract Procedure Rules –
Amendments Log**

Old Item No	New Item No	Amendment Type	Amendment	Reason for Change
18.2	18.2	Addition	Addition of the word 'purchase'	Clarity on the application of these rules
18.5	18.5	Addition	Addition of the word 'all'	Clarity on requirement to comply with all legislation
18.7	18.7	Amendment	Changed "Head of Contracting and Procurement" to "Head of Procurement"	To reflect change of position title on establishment
18.10	18.10	Addition	Added reference to Templates (as well as evaluation models) Added requirement for approval of spend and procurement strategy except in the case of emergency exemptions.	Clarifies current rules
-	18.11	New item	Added requirement for key and high risk commercial strategies to be agreed by COB prior to formal approval	Reflects the role of this new governance board
18.12 /13	18.13 /14	Amendment	Corrected "dynamic purchasing agreements" to "dynamic purchasing systems"	Consistency and alignment with PCR2015.
18.14	18.15	Amendment	Replaced the word 'regime' with 'legislation'	Clarity
18.15	18.16	Amendment and addition	Changed reference to 'goods' to supplies. Addition of wording requiring that the lead Department is responsible for performance managing the contract	Consistency of terms. Reflects responsibilities under the new C,P&CM operating model
-	18.20	New item	Addition of item requiring that below-threshold concession contracts comply with these regulations at the appropriate level.	Formalising approach in practice.
18.19	18.21	Amendment and addition	Change of title/terminology to "Delivery Model Assessment" Addition of detail on the corporate approach to periodic review of services and role of Commercial Oversight function and Board.	Reflects approach and terminology of the new C, P&CM operating model.

**Appendix B: Revisions to
Contract Procedure Rules –
Amendments Log**

18.20	18.22	Replacement	Replaced requirement for dialogue between service area and in-house provision, with requirement to complete a DMA before developing or extending an in-house service arrangement.	Reflects approach and terminology of the new C, P&CM operating model.
18.21	18.23	Addition	Added “..through a DMA process..”	Clarity.
18.24	18.26	Amendment	Amended numerical reference to reflect renumbering of items	Renumbering of items following amendments
18.25	18.27	Amendment	Replaced “Make or Buy” with “DMA”	Reflects approach and terminology of the new C, P&CM operating model.
18.28	18.30	Amendment	Replaced the word ‘regime’ with ‘legislation’	Clarity
18.29	18.31	Addition	Added wording on below threshold ‘Teckal’ type arrangements falling outside CPRs	Formalising approach in practice.
18.30	18.32	Addition	Added wording that Legal services will provide appropriate support with the contract	Clarity
-	18.36 - 18.40	New Section	Additional section covering regulation in relation to Accreditation Schemes/Any Qualified Provider	Formalising approach in practice.
18.34	18.41	Amendment	Changed “Head of Contracting and Procurement” to “Head of Procurement”	To reflect change of position title on establishment
18.35	18.42	Amendment	Moved wording regarding compliance with PCR2015 from subsequent section.	Clarity that this applies to all procurement
18.35	18.43	Separated item and amendment	Added reference to accreditation schemes for ‘light touch’ procurement	Reflects new section 18.36-40
18.36	18.45	Addition	Added “when forming a partnership..”	Clarity
18.37 - 18.41	18.46 - 18.50	Amendment Amendment	Replaced the word ‘regime’ with ‘legislation’ Changed “Head of Contracting and Procurement” to “Head of Procurement”	Clarity To reflect change of position title on establishment

**Appendix B: Revisions to
Contract Procedure Rules –
Amendments Log**

18.43	18.52	Addition	Addition of Dynamic Purchasing Systems to applicable joint purchasing arrangement types	Clarity
-	18.53	New item	Requirement for risk assessment/approval of commercial strategy above £100k	Clarity and improved control. Reflects new C,P&CM operating model governance.
18.45	18.55	Addition	Addition of Dynamic Purchasing Systems, and list of approved frameworks held by Procurement	Clarity and improved control
18.48	18.58	Amendment	Changed “Head of Contracting and Procurement” to “Head of Procurement”	To reflect change of position title on establishment
18.50	18.60	Amendment	Amended wording for clarity that this item refers to following a call-off procedure not establishing the framework agreement itself.	Clarity
18.51 /53/5 4/55	18.61 /63/6 4/65	Amendment	Changed “Head of Contracting and Procurement” to “Head of Procurement”	To reflect change of position title on establishment
18.55	18.65	Addition	Added wording to clarify of the input from Procurement for different value schemes Added bullet point clarifying the procedure for approving direct negotiation of contracts above the PCR threshold Added bullet point clarifying procedure where the value of a scheme cannot be estimated	Clarity of procedures and alignment to recent update to Public Contract Regulations
18.58	18.68	Addition	Clarity on timing of approval to procure outside the eTendering system	Clarity
18.59	18.69	Amendment	Changed “Procurement Manager” to “Head of Procurement”	To reflect existing position title on establishment
18.72	18.82	Amendment	Changed “Head of Contracting and Procurement” to “Head of Procurement”	To reflect change of position title on establishment
18.76	18.86	Amendment	Changed “Head of Contracting and Procurement” to “Head of Procurement”	To reflect change of position title on establishment
18.81	18.90	Amendment	Replaced the word ‘regime’ with ‘legislation’	Clarity, correction

**Appendix B: Revisions to
Contract Procedure Rules –
Amendments Log**

			Corrected year of Utilities legislation to 2016	
18.82	18.91	Amendment	Updated approval rule to reference 18.10 and 18.11. Addition of the words 'spend' and 'committee'.	Clarity
18.79	18.94	Amendment, Addition and relocation	Change of audit reporting from quarterly to annually. Removed requirement for Chief Finance Officer to consult with the portfolio holder. Addition of requirement to send exemption requests to Head of Procurement for approval. The exemptions procedure this has been relocated within the document to follow the description of compliant contract award procedures, as this is a separate process.	Change of frequency and clarity of process.
-	18.95	New item	Item detailing the process for above threshold contract awards which are permitted without a competitive procedure	Providing clarity on an omission in current rules
18.96	18.107	Amendment	Changed "Head of Contracting and Procurement" to "Head of Procurement"	To reflect change of position title on establishment
18.98	18.109	Amendment	Replaced the word 'regime' with 'legislation'	Clarity
18.99	18.110	Addition	Added wording for clarity regarding approval routes for contract variations and extensions	Clarity
18.115	18.126	Deletion	Removed requirement to complete a 'Use of Consultants' form	Update to procedures, as the decision to use a consultant is now part of the Delegated Decision Making process rather than a separate approval by the Leader.

**Appendix B: Revisions to
Contract Procedure Rules –
Amendments Log**

		Amendment and Addition	<p>Contractor Thresholds:</p> <p>Wording on applicable thresholds added.</p> <p>Amended wording and job titles in statements regarding corporate contracts and frameworks.</p>	Clarity
		Amendment	<p>Appendix 1: Exemption from Procurement Procedures</p> <p><u>Instructions on Completing the form</u> Clarified final point regarding rejection of exemption requests that contravene legislation.</p> <p><u>Form:</u> Amended reference to CPRS from FPRS.</p> <p>Simplified phrasing in relation to acceptable reason for exemptions.</p> <p>Corrected terminology (reasons for exemptions) for consistency with remainder of document.</p> <p>Amended wording and job titles in reasons for exemption requests.</p> <p>Added requirement for Head of Procurement to confirm whether the exemption request is above threshold.</p>	<p>Clarity on procedures.</p> <p>Update of Job Titles in accordance with current structure.</p> <p>Clarity of Terminology.</p>

This page is intentionally left blank