

## Appendix A – Amendments to Contract Procedure Rules

Following a review of the Council’s Contract Procedure Rules, it is proposed to make some minor wording and administrative changes that have no impact on the content of Contract Procedure Rules (CPR) and a number of more substantive changes. The proposed revised version of Contract Procedure Rules is attached, highlighting key changes throughout. In summary the main changes, and the reasons for those changes, are:

Section of CPR, Constitution Version 7.27 (current version)	Key changes proposed	Reasons
Various	'goods, materials or services' amended to 'works, supplies or services'	Reflects current terminology – based on current Procurement Regulations
	Updated Procurement Regulations throughout	To bring up to date with current legislation (Procurement Regulations introduced 2015 and 2016)
	Amended references to various out of date policies/ organisations including NCC Codes of Practice, CIPFA guidance, Office of Government Commerce	To bring up to date/ remove irrelevant references
	Replaced 'Procurement Toolkit' with 'guidance' of the Procurement Team	To cover any form of guidance of the Procurement Team
	'Senior Procurement Manager' amended to Head of Procurement or nominated representative	To reflect current Procurement Team structure and enable delegation to a relevant representative as required
CPR 1.2	Added reference to grants as exempt from CPRs, with definition	To clarify that grant funding arrangements are not subject to the procedural requirements of the CPRs. Definition to clarify the distinction between grants and contracts
CPR 2.7	Added definition of how the value of a scheme (contract or framework) is to be calculated and moved consolidation provisions (4.1.3) to this section	Clarifying how the value of a contract or framework is to be calculated for purposes of decision making and advertising contract. All rules on aggregation/consolidation brought together
CPR 2.7	Added provisions to define concession contracts and how the value is to be calculated	To clarify when an arrangement comprises a concession contract how value is to be calculated to ensure compliance with CPRs

Section of CPR, Constitution Version 7.27 (current version)	Key changes proposed	Reasons
Sections 2.8; 5.2	Added provisions covering arrangements delivered in house and by subsidiary companies (Teckal)	To clarify that in house and Teckal arrangements are not subject to CPRs
Section 3	Removed Section 3 on Partnering/Framework Agreements	Framework agreements covered in Section 4; partnering arrangements no longer applicable
CPRs 5.1/5.2	Increased financial thresholds for quotation or tender process to £25,000 - £100,000 for quotations and above £100,000 for tenders	To bring thresholds in line with the financial approvals process requiring delegated decision above £25,000, the legal obligation to publish award notices on contracts finder above £25,000 and the Contract Purchase Agreement generic value of £25,000 being introduced with Fit for the Future
CPR 4.9	Included limit of £1000 for single transactions, or Procurement approval required	To control purchasing transactions outside of formal contracting and payment procedures via new Oracle system
CPRs 6; 8.2	Removed procedures for tenders not using the E-tendering system	Not applicable – the E-tendering system must be used for all tendering procedures
CPR 8.4	Removed specific provisions on consortium tenders	Specific procedures for consortium tenders are not required as general procedures apply
CPR 8.10	Updated/clarified requirements for information to be provided to unsuccessful tenderers	To ensure compliance with Procurement Regulations requirements for notifications to unsuccessful bidders
CPR 9.7	Added transparency provisions - requiring notification and recording of contracts awarded and publishing in accordance with Procurement Regulations	To ensure compliance with UK Transparency obligations for maintenance of a contracts Register and Procurement Regulations requirements for publishing of contract awards
CPR 9.8	Updated provisions on extensions (variations) to contracts to refer to Procurement Regulations requirements	Grounds for permissible variations to contracts (including extensions) are now explicitly covered in the Procurement Regulations therefore specific procedures are not necessary

## **Contract Procedure Rules**

### **Contents**

<u>Paragraph</u>	<u>Section</u>
1	Compliance
2	Best Value
3	Selection of Suppliers
4	Invitations to Suppliers
5	Procedures for Quotation and Tender Discussion and/or Clarification
6	Acceptance of Quotations and Tenders
7	Orders and Contracts
8	Supplier Performance
9	Payments
10	Performance Security Arrangements
11	Insurances
12	Consultants
13	Records
14	Audit Examination

## 1 Compliance

- 1.1 The purpose of these Contract Procedure Rules is to safeguard the interests of the City Council, its employees, or any person acting on behalf of the City Council.
- 1.2 These Contract Procedure Rules must be followed by every City Council employee and any person acting on behalf of the City Council every time there is a requirement of the City Council to procure works, supplies or services under a contract. All necessary legal, financial and professional advice must be taken by such employees or by such persons to ensure compliance with these Contract Procedure Rules. These Contract Procedure Rules must be followed in consultation with and in accordance with any guidance provided by the Council's Procurement Team.
- 1.3 Where the Council provides any financial support to an organisation in delivery of their services and does not receive a direct benefit in return, 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.
- 1.4 Every City Council employee must ensure that they are aware of and observe the provisions of the City Council's Code of Conduct for Employees.
- 1.5 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 other legislation for the time being in force.
- 1.6 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.
- 1.7 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.

## 2 Best Value

- 2.1 Best Value requires the City Council to make proper arrangements for securing continuous improvement in the economy, efficiency and effectiveness in the use of its resources and is the optimum combination of whole life costs and benefits to meet customer requirements.
- 2.2 Best Value requires the City Council to identify those quotations and tenders which will secure the best balance of price against quality over the whole life of the scheme.
- 2.3 Corporate Directors and the Director for Public Health must adopt the Quotation/Tender Evaluation Models recommended by the Procurement Team, to ensure compliance with the requirements of these Contract Procedure Rules.

### 2.4 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.

Where framework agreements and/ or dynamic purchasing agreements 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).

In the case that framework agreements and/ or dynamic purchasing agreements are created for other local authorities or public bodies to use, the value for any procurement documents (including OJEU) 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.

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 EU procurement regime.

In the event that multiple departments are procuring the same goods, services or works, 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.

## 2.5 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).

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.

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.

## 2.6 Make or Buy

2.6.1 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." Therefore a joined up, strategic 'Make or Buy' decision for all goods and services should be made as

## part of any procurement options appraisal.

2.6.2 Where the Council has chosen to develop and sustain internal expertise in an area then it is likely that using the internal provision will secure Best Value. As a minimum, dialogue should be had between the purchasing section and the internal provider before any decision is made to procure externally.

2.6.3 Arrangements for internal provision should be periodically reviewed 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 (e.g. 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.

2.6.4 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.

2.6.5 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).

2.6.6 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 2.5.4 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.

2.6.7 The Chief Financial Officer is responsible for updating and reviewing procedures and processes for resolving any disputes within the 'Make or Buy' process between departments.

2.6.8 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.

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

#### Nottingham City Council owned companies – Teckal

2.6.10 When buying services the Council can consider entering into arrangements with one of its subsidiary companies if it meets certain requirements falling under the EU procurement regime (known as the 'Teckal' exemption).

2.6.11 Arrangements falling within the Teckal exemption are excluded from these CPRs. 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.

2.6.12 Legal services should be consulted to advise whether the Teckal exemption applies.

### 2.7 Co-operation with other public bodies

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

2.7.2 As a minimum co-operation between the Council and another public body must have the aim to ensure that public services they have to perform are provided with a view to achieving objectives they have in common and that the co-operation is governed solely by considerations relating to the public interests.

2.7.3 Legal Services should be consulted to advise whether co-operation would be permitted for the proposed arrangement, in which case these CPR's will not apply.

## 3 Selection of Suppliers

3.1 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.

3.1.1 Where a corporate contractual arrangement has not been established, Corporate Directors and the Director for Public Health shall ensure that quotations and tenders are invited in consultation with the Head of Procurement or nominated representative by the use of one of the following approaches:

3.1.1.1 EU public procurement – the EU public procurement regime is mandatory for any scheme which has a procurement requirement falling within the EU procurement regime and, if so, whose value, or (if made up of a series of related schemes), whose aggregate

value is likely to exceed the relevant EU threshold figure for the time being in force;

- 3.1.1.2 Joint procurement arrangements/frameworks/purchasing consortia arrangements established by other contracting authorities;
- 3.1.1.3 Use of frameworks such as Crown Commercial Services the Eastern Shires Purchasing Organisation (ESPO);
- 3.1.1.4 Suitable suppliers derived from a competitive selection process as set out in 4.1.1 and 4.1.2 conducted in consultation with the Head of Procurement or nominated representative and where necessary, also with the Head of Legal and Governance.

3.1.2 Corporate Directors and the Director for Public Health are encouraged to adopt a collaborative approach to procurement, where appropriate. A partner is obtained through a competitive selection process which can be demonstrated by using any of the arrangements set-out in paragraph 3.1 of these Contract Procedure Rules.

## 3.2 EU Public Procurement including Framework Agreements

- 3.2.1 Corporate Directors and the Director for Public Health shall ensure that the letting of a scheme which has a procurement requirement falling within the EU procurement regime and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant EU threshold figure for the time being in force, complies with the requirements of the Public Contracts Regulations 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.
- 3.2.2 Corporate Directors and the Director for Public Health shall ensure that any scheme which has a procurement requirement falling within the EU procurement regime and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant EU threshold figure for the time being in force is referred to the City Council's 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.
- 3.2.3 Corporate Directors and the Director for Public Health shall ensure that the appropriate advertisements are placed in the Official Journal of the European Union (OJEU) and other relevant publications in conjunction with the City Council's Procurement Manager. The City Council's Head of Procurement or nominated representative shall maintain a register of such advertisements so placed.
- 3.2.4 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 EU procurement regime and, if so, whose value, or (if made up of a series of related schemes), whose aggregate value is likely to exceed the relevant EU threshold figure for the time being in force (refer to paragraph 3.3 of these Contract Procedure Rules for the use of framework agreements established by other contracting authorities).

- 3.2.5 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 EU procurement regime or, if it does, whose value, or (if made up of a series of related schemes) whose aggregate value is not likely to exceed the relevant EU threshold figure for the time being in force, otherwise the requirements of these Contract Procedure Rules shall be complied with.
- 3.2.6 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>.

### 3.3 Joint Procurement Arrangements/ Frameworks/ Purchasing Consortia

- 3.3.1 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:
- 3.3.1.1 joint procurement arrangements with other local authorities or other contracting authorities;
  - 3.3.1.2 framework arrangements established by contracting authorities such as the East Midlands Property Alliance (EMPA);
  - 3.3.1.3 purchasing consortia established by contracting authorities such as Crown Commercial Services and the Eastern Shires Purchasing Organisation (ESPO).
- 3.3.2 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.

- 3.3.3 Framework arrangements established by contracting authorities must be evaluated and approved by the Head of Procurement or nominated representative and a Legal Services Manager before being used.
- 3.3.4 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.
- 3.3.5 In all cases where the fulfilment of requirements using arrangements referred to in paragraph 4.4.1 of these Contract Procedure Rules is being considered, Corporate Directors 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.
- 3.3.6 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 3.3.1 of these Contract Procedure Rules.
- 3.3.7 Corporate Directors and the Director for Public Health shall ensure that the terms and conditions entered into are complied with.
- 3.3.8 Corporate Directors and the Director for Public Health shall ensure that where a framework agreement is entered into, the provisions of such agreement regarding the number of suppliers to be invited to provide quotations or to submit tenders in pursuance of that agreement are followed, notwithstanding the requirements of paragraph 4 of these Contract Procedure Rules.

#### 3.4 Vetting of Suppliers

- 3.4.1 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.

- 3.4.2 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.

### 3.5 Purchasing Cards

- 3.5.1 Corporate Directors and the Director for Public Health shall:

3.5.1.1 only use the City Council's Purchasing Card Scheme as outlined in The Purchase Card Guidance as part of their procurement regime;

3.5.1.2 ensure that purchasing cards are used:

3.5.1.2.1 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.

3.5.1.2.2 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;

3.5.1.2.3 over the internet on secure sites and in accordance with the guidance provided in The Purchase Card Guidance; and

3.5.1.2.4 in other circumstances agreed with the Chief Finance Officer.

## 4 Invitations to Suppliers

- 4.1 Procurement of schemes for works, supplies and services (including schemes involving construction and engineering related work):

4.1.1 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 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 are legally accessible pursuant to paragraph 3 of these Contract Procedure Rules. Corporate Directors and the Director for Public Health, however, may elect to seek tenders in lieu of quotations.

4.1.2 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 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 are legally accessible pursuant to paragraph 4 of these Contract Procedure Rules.

4.2 Quotations and Tenders as detailed in 4.1.1 and 4.1.2 above need not be sought:

4.2.1 if the estimated value of a scheme over the whole life of the scheme is less than £25,000 (£5,000 for Schools);

4.2.2 in the event of an emergency (Financial Regulation 3.29);

4.2.3 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 2.6.10 to 2.6.12 above;

4.2.4 when the arrangement is through co-operation with another public body in accordance with paragraphs 2.7.1 to 2.7.3 above.

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.

4.3 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.

4.4 In consultation with the Head of Legal and Governance, the Procurement Manager 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.

4.5 Other methods such as e-auctions and dynamic purchasing systems may be used to invite and receive quotations and tenders electronically, provided there is no conflict with the requirements of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2015 and the Concessions Contracts Regulations 2015 and any re-enactment(s) of them, otherwise the requirements of these Contract Procedure Rules shall be complied with.

4.6 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.

4.7 Corporate Directors and the Director for Public Health shall ensure that each individual scheme be packaged to secure Best Value for the City Council.

4.8 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.

- 4.9 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.
- 4.10 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, with a minimum period of ten working days allowed for a response. This period may be reduced provided the special circumstances are recorded.
- 4.11 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:
  - 4.11.1 the requirements set-out in these Contract Procedure Rules appropriate to the circumstances of the invitation;
  - 4.11.2 a specification that describes the City Council's requirements in sufficient detail to enable the submission of competitive offers;
  - 4.11.3 the nature and quantity of the works, supplies or services that is required;
  - 4.11.4 the time, or times, within which the works or services are to be performed or the goods and materials are to be delivered;
  - 4.11.5 a notification that assignment or sub-contracting is not permitted without prior written consent from the City Council, unless the circumstances of the particular invitation require a different approach;
  - 4.11.6 a notification that quotations are provided and tenders are submitted to the City Council on the basis that they are compiled and delivered at the supplier's expense and that, in no circumstances, will the City Council contribute to such expenses whatever the outcome of the procurement process;
  - 4.11.7 a notification that the City Council is not bound to accept the lowest or any quotation or tender for a specific scheme;
  - 4.11.8 a Certificate of Bona Fides;
  - 4.11.9 a Form of Tender;
  - 4.11.10 adequate and appropriate provisions regarding insurances, health and safety, equality and diversity, data protection and freedom of information;
  - 4.11.11 adequate and appropriate price adjustment provisions (unless the circumstances of the particular invitation require a different approach), anti-collusion provisions; anti-corruption provisions and anti-fraud provisions

(refer to paragraph 7.5(vi) of these Contract Procedure Rules);

4.11.12 robust and transparent award criteria to be used in evaluating quotations or tenders received to ensure compliance with the requirements of these Contract Procedure Rules; and/or

4.11.13 any other relevant items that are considered necessary.

4.12 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.

4.13 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.

## **5 Procedures for Quotation and Tender Discussion and/or Clarification**

### **5.1 Pre-Quotation and Pre-Tender Discussion**

5.1.1 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.

### **5.2 Post-Quotation and Post-Tender Clarification**

5.2.1 Clarification after receipt of quotations or tenders and before the letting of scheme(s) with those supplier(s) who have submitted such quotations or tenders may be appropriate 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.

5.2.2 Where post-quotation or post-tender clarification results in a fundamental change to the specification or the proposed terms and conditions that are to apply, an official order must not be issued or a formal contract must not be made and quotations or tenders must be re-invited.

## 5.3 Notification

5.3.1 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.

## 6 Acceptance of Quotations and Tenders

- 6.1 Whenever the City Council's e-tendering system is not used, 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 (e.g. value, price, delivery period, or other significant issues unique to each quotation).
- 6.2 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.
- 6.3 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
- 6.4 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 Contracting and Procurement or nominated representative for a decision.
- 6.5 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.
- 6.6 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.
- 6.7 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).
- 6.8 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 EU procurement regime and has a value or (if made up of a series of related schemes) an aggregated value likely to exceed the relevant EU 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 2015 or the Concession Contracts Regulations 2016 as applicable.

- 6.9 Each scheme shall be let on the authority of a Corporate Director or the Director for Public Health, following a decision having been taken on the acceptance of a quotation or tender by an appropriate decision-maker (i.e. for executive business a Corporate Director or the Director for Public Health (or other specifically delegated officer), Portfolio Holder/Leader or Executive Board) in accordance with the currently prevailing financial limits.
- 6.10 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 (e.g. emergency and/or operational action) or items of an exceptional nature must be included in the report.
- 6.11 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.

## **7 Orders and Contracts**

- 7.1 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 7.2 of these Contract Procedure Rules.
- 7.1.1 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 3.5 of these Contract Procedure Rules.
- 7.1.2 Corporate Directors and the Director for Public Health shall ensure that official orders are also raised through the City Council's main financial system:
- 7.1.2.1 for call-offs, draw-downs or other similar arrangements, where an official order has already been issued or formal contract has already been made, or where a series of official orders have already been issued or formal contracts have already been made with the same external organisation, which relate to the same scheme; and

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

## **NOTES**

- A. *The law prevents formal contracts being made between City Council Departments. However, any agreement between City Council Departments relating to a scheme must be evidenced by the issue of an official order.*
- B. *Contracts under seal are made to provide a 12 year period within which action can be taken for breach. Under simple contracts (contracts which are only signed), this period is reduced to 6 years. In the determination of which to choose, risk is a factor in addition to value.*
- C. *The Director 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 9 of these Contract Procedure Rules.*
- D. *The Chief Finance Officer may authorise specific exceptions to the requirement that all schemes be evidenced by means of an official order or formal contract. The Chief Finance Officer may only provide such authorisation after consultation with the Director for Legal and Governance.*

7.2 In exceptional circumstances, where an official order has been raised electronically, i.e. 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".

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

7.3.1 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.

7.3.2 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.

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

- 7.4.1 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;
- 7.4.2 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 7.3 of these Contract Procedure Rules;
- 7.4.3 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 (see Financial Regulation D.5) 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.

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

- i) no official order be issued or formal contract made for a scheme which will commit the City Council to expenditure unless provision exists to finance that expenditure, except in the event of an emergency;
- ii) no official order be issued or formal contract made for work, goods, materials or services for the private use of any person;
- iii) only official order forms in a format approved by the Chief Finance Officer be used;
- iv) each official order or formal contract indicates clearly the nature and quantity of the work, goods, materials or services, the agreed value or price and provisions for payment, any trade or cash discount or allowance, the time, or times, within which such order or contract is to be performed, together with any reference to a quotation, tender or other arrangement 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;

- v) each official order or supplier's form of order used to call-off, draw-down or make other similar arrangements where a formal contract in respect of such requirements is already made (whether such contract be under seal or a simple contract) contains full details of the contract in question, including as a minimum: the date of the contract, the names of the parties to it and a description of the works, supplies or services (as the case may be) which form the subject-matter of the contract;
- vi) each official order or formal contract contains adequate and appropriate (and in addition, the applicable requirements of paragraphs 4.11.1 to 4.11.13 inclusive of these Contract Procedure Rules):
- price adjustment provisions;
  - anti-collusion provisions;
  - anti-corruption provisions; and
  - anti-fraud provisions;
- vii) each official order or formal contract contains the following clause (or such other similar clause as a Legal Services Manager may decide):
- “The City Council shall be entitled to immediately cancel this contract and to recover from the supplier all costs and losses resulting from such cancellation, if the supplier, or any person employed by, or acting on behalf of the supplier (whether with or without the knowledge of the supplier), shall:*
- (a) have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or for having done, or refrained from doing any action in relation to the obtaining the execution of this contract, or any other contract with the City Council; or*
  - (b) for showing, or forbearing to show, favour or disfavour to any person in relation to this contract, or any other contract with the City Council; or*
  - (c) has been convicted of any offence under the Bribery Act 2010; or*
  - (d) shall have given any fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972.*
- For the avoidance of doubt, the events under sub-clauses (c) and (d) above shall apply to this contract, or any other contract with the City Council or with any other party, or in respect of any relevant function or activity, as the case may be.”;*
- viii) where applicable, and with the advice of 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 7.5 of these Contract Procedure Rules):
- the cancellation of such official order or formal contract;
  - the making of retentions; and
  - the deduction of liquidated and ascertained damages in the event of the supplier's non-compliance by the due or any extended completion date for a scheme;
- Where the City Council has a right to liquidated and ascertained damages, such right must be enforced by deductions from monies owing to the supplier. Any deduction of liquidated and ascertained damages shall be made in accordance with a certificate or instruction issued by Corporate Directors, the Director for Public Health or authorised issuing officers;

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

## 7.6 Transparency obligations

7.6.1 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.

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

7.6.3 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 EU procurement regime or are of a value likely to exceed the relevant EU threshold figure for the time being in force.

7.7 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 with the Head of Procurement or nominated representative.

7.8 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.

7.9 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.

7.10 Provision of Works, Supplies or Services by the City Council to Other Organisations

7.10.1 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.

## **8 Supplier Performance**

8.1 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.

8.2 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 shortcomings.

8.3 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.

8.4 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.

8.5 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.

## **9 Payments**

9.1 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:

9.1.1 the appropriate term(s) of the official order or formal contract; and

9.1.2 Corporate Financial Procedures D.60 and D.67.

## **10 Performance Security Arrangements**

10.1 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.

10.2 Each external organisation invited to submit a tender in respect of a scheme having a value estimated to be £2,000,000 or more must be required to make its own security arrangements and allow for the cost of such provision in its tender. Corporate Directors and the Director for Public Health shall ensure that:

10.2.1 the need for such allowance is made clear in the tender documents;

10.2.2 in conjunction with a Legal Services Manager, that the terms of such security arrangements are adequate and appropriate; and

10.2.3 the scheme must not commence until a decision has been made by a Legal Services Manager as to whether such security arrangements should be put into effect.

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

10.3.1 the value of any official order to be issued to or formal contract to be made with the external organisation; or

10.3.2 the value of a series of official orders to be issued to or formal contracts to be made with the same external organisation where such official orders or formal contracts relate to the same scheme; or

10.3.3 the aggregate value of call-offs, draw-downs or other similar arrangements to be made against:

10.3.3.1 any official order to be issued to or formal contract to be made with the external organisation; or

10.3.3.2 a series of official orders to be issued to or formal contracts to be made with the same external organisation where such official orders or formal contracts relate to the same scheme.

10.4 Nothing in these Contract Procedure Rules shall prevent security arrangements in accordance with this Contract Procedure Rule 10 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.

## **11 Insurances**

11.1 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.

## **12 Consultants**

12.1 Where a supplier is providing consultancy services to the City Council (e.g. 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.

12.2 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 and a Use of Consultants Approval Form is completed.

12.3 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.

## **13 Records**

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

13.2 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.

## **14 Audit Examination**

14.1 The authority of the City Council's Internal Audit is outlined in the City Council's Financial Regulation C.9 and further detail is outlined in CFP C.24 – C.35.

14.1.1 Before the final payment is certified in respect of any scheme for construction and engineering related work, such scheme and all documentation associated with it may be examined by the City Council's Internal Audit. All such documentation shall be provided to the City Council's Internal Audit within the time-scale for the ascertainment of the final payment set out in the contractual

provisions relating to an official order or formal contract in respect of any scheme for construction and engineering related work.

- 14.1.2 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.
- 14.1.3 The City Council's Internal Audit may, at any time, examine any scheme and all associated documentation for works, supplies or services.
- 14.1.4 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.