**Constitution**

**Article Eighteen: Contract Procedure Rules**

**Interpretation**

In these Contract Procedure Rules:

|  |  |  |
| --- | --- | --- |
| Best Value | means | The Best Value Duty relates to the statutory requirement for local authorities and other public bodies defined as best value authorities in [Part 1 of the Local Government Act 1999](https://www.legislation.gov.uk/ukpga/1999/27/contents) (“the 1999 Act”) to “make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and the statutory guidance on the Best Value Duty issued under [section 26 of the 1999 Act](https://www.legislation.gov.uk/ukpga/1999/27/section/26). |
| Chief Finance Officer | means | The person designated as the Finance Officer responsible for ensuring the proper administration of the City Council’s financial affairs under Section 151 of the Local Government Act 1972 (see Article 5 – Officers). |
| Contract Procedure Rules | means | The procedures that apply to the entering of contracts with external suppliers (see Article 18 – Contract Procedure Rules). |
| Corporate Director(s) | means | The officers designated as such in Article 5 – Officers. For the purposes of these Financial Regulations the Chief Executive and Director of Public Health shall be deemed to be Corporate Directors. |
| Corporate Financial Procedures (CFPs  Procurement Act 2023 Guidance Documents | means  means | The processes, rules and standards approved by the Chief Finance Officer under delegated powers and which should be read alongside these Regulations.  the Cabinet Office suite of guidance documents, as updated from time to time addressing all aspects of the new regime, covering subjects from transitional arrangements and covered procurement through to pre-market engagement, award rules, exclusions and contract modifications and to be read in conjunction with the Procurement Act 2023 and its associated regulations aimed at providing additional to technical guidance and help with interpretation and understanding of the new regime. |
| UK Public Procurement Legislation | means | Legislation which currently governs public procurement and contracts in the United Kingdom. This includes the Procurement Act 2023, Health Care Services (Provider Selection Regime) Regulations 2023. Where applicable for existing contracts, frameworks and dynamic purchasing systems this also includes the Public Contracts Regulations 2015, Concession Contracts Regulations 2016 and Utilities Contracts Regulations 2016. |

* 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.

* 1. 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, goods or services under a contract.  Employees must obtain, consider and follow 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 City Council’s Procurement Team.
  2. Where the City Council provides any financial support to an organisation,  in anticipation of it being applied for an agreed purpose, and does not receive a direct benefit in return; for example the purpose is  purely for community benefit and not for or on behalf of the City Council, this may be considered a grant rather than a contract for works, goods or services and may not be subject to these Contract Procedure Rules. However, it should be noted that a grant, as financial assistance, may be considered a subsidy within the meaning of the Subsidy Control Act 2022 and its acceptance and use, if it does comprise a subsidy will need to comply with that Act and the accompanying subsidy regime statutory guidance, including transparency requirements. 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.
  3. Every City Council employee must ensure that they are aware of and observe the provisions of Article 16 – Employee Code of Conduct. In particular:
* Officers must take all reasonable steps to identify, declare and keep under review any conflicts of interest or potential conflicts of interest when procuring works, goods or services.
* All reasonable steps must be taken to ensure that a conflict of interest does not put a supplier at an unfair advantage or disadvantage. If the officer deems that the advantage or disadvantage cannot be avoided, they should contact the Procurement Team before progressing further with the procurement. This obligation starts when the need for the procurement is first identified and continues until the termination of the contract.
* Where the procurement is valued above £100,000, a conflicts assessment shall be prepared by the Procurement Team before the procurement is published. This will include details of all conflicts or potential conflicts of interest and any steps that the City Council has taken or will take to mitigate that conflict of interest. This conflicts assessment must be kept under review and revised as necessary during the procurement and contract term.
* Where the procurement is valued below £100,000, Corporate Directors are responsible for ensuring conflicts or potential conflicts are identified and mitigated, in accordance with guidance provided by the Procurement Team. This should be proportionate to the procurement and may include preparing and keeping under review a conflicts assessment.
  1. The Corporate Directors 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.
  2. These Contract Procedure Rules must be read in conjunction with the City Council’s Commercial and Procurement Strategy and any specific guidance issued by the Procurement Team.
  3. Corporate Directors **must use the City Council’s e-tendering system** to procure works, goods or services unless a departure from that process is expressly approved by the Head of Procurement or a nominated representative.
  4. **Best Value**

In the context of the procurement of works, goods or services under a contract, securing practical compliance with the Best Value duty 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 achieving optimum combination of whole life costs and benefits to meet user requirements. The City Council must ensure the procured works, goods or services improve outcomes for the people who use them and achieve the best balance of cost and quality (having regard to economy, efficiency and effectiveness) over the whole life of a scheme, by assessing quotations and tenders in this context and in delivering effective contractual performance management.

* 1. Corporate Directors 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.
  2. 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 their nominated representative, and the Head of Procurement will make the final decision.
  3. **Contract Value, Deemed Value and Aggregation**

The value of a contract for governance route decision making purposes is the estimated maximum value payable net of VAT over the whole life of the contract (including any anticipated variations or extensions) as set out explicitly in any procurement documents – see also Concession Contract valuation below.

18.12 Corporate Directors shall ensure that any scheme which has a procurement requirement covered by 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

* is referred to the City Council’s Head of Procurement or nominated representative to ensure compliance with the legislation
* complies in respect of technical specifications and procedures covering the seeking of tenders, the selection of the successful supplier(s) and awards
* is advertised on Find a Tender and other relevant publications, as required by the legislation
* complies with the specific requirements for dynamic markets, open frameworks and frameworks (refer to paragraph 18.51 of these Contract Procedure Rules for the use of frameworks established by other contracting authorities).

18.13 For the purpose of compliance with UK public procurement legislation, the applicable value of a contract is **inclusive** of VAT. Where relevant, the calculation should be made by reference to guidance in Schedule 3 of the Procurement Act 2023 and relevant Procurement Act 2023 - Guidance Documents.

18.14 Contracts whose value cannot be estimated are deemed above-threshold for the purpose of compliance with the UK public procurement legislation and must be referred to the Head of Procurement as set out in 18.12. The Health Care Services (Provider Selection Regime) Regulations 2023 has no minimum threshold for application, therefore all procurement falling within this legislation must be referred to the City Council’s Head of Procurement or nominated representative to ensure compliance as above.

18.15 Where frameworks, open frameworks and/or dynamic markets 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 market (including extensions).

18.16 In the case that frameworks, open frameworks and/ or dynamic markets are created for other local authorities or public bodies to use, the value stated in procurement documents should be the total value of estimated usage across all public bodies named. However, for the purposes of internal decision-making approval, the value of the contract stated l will be the expected expenditure of the City Council only and should not include external public bodies.

18.17 Corporate Directors shall have the discretion, in consultation with the City Council’s Head of Procurement or nominated representative, to adopt the requirements of the Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 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.

18.18 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 public procurement legislation.

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

**18.20** **Concession contracts**

Where the City 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 City Council paying for them directly, this may be a concession contract which requires a procurement process in line with the Procurement Act 2023 (PA2023).

18.21 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 City Council or its residents.

18.22 The value of a concession contract, subject to the PA2023, is the estimated total amount that the supplier could expect to receive in consideration for the works, goods and services over the duration of the contract inclusive of VAT, as estimated by the City Council. Legal Services, in consultation with Procurement colleagues can advise if a contract is a concession contract which falls within the PA2023.

18.23 Where the value of a concession contract is below threshold for PA2023 only those with an estimated total amount that the supplier could expect to receive in excess of £750k must comply with the need to tender as laid out in 18.66 (the total turnover value is for the life of the contract or 5 years whichever is the longest). For values between £100k and £750k three quotes should be sought in line with 18.66. For turnover values below £100k over the lifetime of the contract Corporate Directors may directly award to a supplier.

**18.24** **Delivery Model Assessment (Make or Buy)**

The City Council’s Commercial and Procurement Strategy states: “Procurement is the process of acquiring the goods, services and works an organisation needs. It spans the whole commercial cycle…including make or buy’ decisions, which may result in the provision of services in-house where appropriate.” A relevant Delivery Model Assessment (DMA) must be included in the commercial strategy for all works, goods and services.

18.25 A joined up, strategic, DMA will be periodically undertaken for all City Council services, overseen by the Commercial and Procurement function. Any exception to an agreed DMA must be agreed by the Commercial Oversight Board or its successor.

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

18.27 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 considering, 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.

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

* the cost required to provide the service internally is more 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.

18.29 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).

18.30 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 18.28 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.

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

18.32 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.

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

**18.34** **Nottingham City Council owned companies – Counterparty exempted contracts: Vertical arrangements**

When buying services the City Council can consider entering into arrangements with one of its subsidiary companies if it meets certain requirements within the UK procurement legislation (Counterparty exempted contracts: Vertical arrangements).

18.35 Arrangements falling within the Counterparty exempted contracts: Vertical arrangements exemption are excluded from these Contract Procedure Rules regardless of value. The City 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.

18.36 This includes contracts below the thresholds of the Procurement Act 2023 or otherwise not subject to UK public procurement legislation.

18.37 Legal services should be consulted to advise whether the Counterparty exempted contracts: Vertical arrangements exemption applies and to provide appropriate support with the contract

**18.38** **Co-operation with other public bodies – Counterparty exempted contracts: Horizontal arrangements**

In limited circumstances it may be possible for the City Council to co-operate with other public bodies without undertaking a procurement process, if it meets certain requirements within the UK procurement legislation (Counterparty exempted contracts: Horizontal arrangements)

18.39 As a minimum co-operation between the City Council and another public body must be with the aim of achieving objectives the authorities have in common in connection with the exercise of their public functions; and solely in the public interest. Arrangements falling within the Counterparty exempted contracts: Horizontal arrangements exemption are excluded from these Contract Procedure Rules regardless of value. The City Council will still be required to enter into a contract with the other public body and approval will be required to enter into such contract and demonstrate best value.

18.40 Legal Services should be consulted to advise whether Counterparty exempted contracts: horizontal arrangements applies, in which case these Contract Procedure Rules will not apply.

**18.41** **Accreditation Schemes / Any Qualified supplier**

Where a supplier accreditation scheme or ‘Any Qualified Supplier’ scheme is proposed, advice must be taken from the Head of Procurement and Head of Legal to determine whether the proposed model is permissible in line with the Procurement Act 2023 ‘light touch’ regime or separate ‘regulated health’ procurement provisions for specified goods or services by a ‘relevant authority’ under the Health Care Services (Provider Selection Regime) Regulations 2023.

18.42 The key principles to be applied in determining whether contracts may be directly awarded via an accreditation scheme are:

* User choice determines 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

18.43 When awarding contracts under an accreditation scheme, Corporate Directors shall ensure that the most suitable arrangement is secured, the details are recorded in writing and appropriate approval is sought for the City 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 City Council’s resources and to secure the optimum combination of whole life costs and benefits to meet customer requirements.

18.44 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.

**18.45** **Selection of Suppliers**

Corporate Directors shall ensure that where a Corporate Contract exists this is always used to procure those works, goods or services. Corporate Contracts are arrangements established by the City Council’s Head of Procurement or nominated representative.

18.46 Only where a Corporate Contract has not been established may Corporate Directors ensure that quotations and tenders are invited in consultation with the Head of Procurement or nominated representative.

18.47 Any quotation or tender process must comply with these Contract Procedure Rules and the UK public procurement legislation with due regard to Procurement Act 2023 - Guidance Documents and be based on the aggregate value of expenditure for the City Council as a whole.

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

* Joint procurement arrangements/dynamic markets/open frameworks/frameworks, established by other contracting authorities or purchasing consortia such as such as Crown Commercial Services, the Eastern Shires Purchasing Organisation (ESPO) or North East Procurement Organisation (NEPO).
* For “light touch” services (ie: for certain social, health, education and other public services, as defined in schedule 1 to the Procurement Regulations 2024 (the Regulations) by description and reference to corresponding Common Procurement Vocabulary (CPV) codes, which are above the relevant threshold in Schedule 1 of the Act and which are subject to more flexible procurement rules), accreditation or any qualified provider process
* Suitable suppliers derived from a competitive selection process as set out in 18.66 conducted in consultation with the Head of Procurement or nominated representative and where necessary, also with the Head of Legal.

18.49 Corporate Directors are encouraged to adopt a collaborative approach to procurement, where appropriate.

18.50 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 18.66 of these Contract Procedure Rules.

**18.51** **Joint Procurement Arrangements/ Dynamic Markets/ Open Frameworks/Frameworks/ Purchasing Consortia**

To fulfil their requirements, Corporate Directors may use a number of arrangements established outside the City Council by other parties, provided that those parties are “contracting authorities” as defined by the Procurement Act 2023 or ‘relevant authorities’ as defined by the Health Care Services (Provider Selection Regime) Regulations 2023 and any re-enactment(s) of them, these arrangements being:

* joint procurement arrangements with other local authorities or other contracting authorities or relevant authorities
* dynamic markets established by other contracting authorities
* framework arrangements established by contracting authorities such as the Scape
* purchasing consortia established by contracting authorities such as Crown Commercial Services and the Eastern Shires Purchasing Organisation (ESPO).

18.52 For requirements above £100k assessed as high risk in accordance with 18.10, or a key decision, the Commercial Strategy must be approved at the relevant Commercial Oversight Board or its successor.

18.53 Any requirement of the City Council involving the procurement of works, goods or services via joint procurement arrangements with other Contracting or Relevant 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.

18.54 Dynamic Markets, Open Frameworks and Frameworks established by contracting or relevant authorities must be evaluated and approved by the Head of Procurement or nominated representative who will first confirm with a Legal Services Manager. 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 18.52.

18.55 Any requirement of the City Council involving the procurement of works, goods 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.

18.56 In all cases where the fulfilment of requirements using arrangements referred to in paragraph 18.51 of these Contract Procedure Rules is being considered, Corporate Directors must be satisfied that the Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 and any re-enactment(s) of them have been complied with by the other contracting or relevant authorities, otherwise the requirements of these Contract Procedure Rules shall be followed.

18.57 Corporate Directors shall ensure that the proposed terms and conditions that are to apply are adequate and appropriate and where necessary shall refer them to the Head of Procurement (or nominated representative) or Head of Legal 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.

18.58 Corporate Directors shall ensure that the terms and conditions entered into are complied with and supplier performance is managed in accordance with these Contract Procedure Rules.

18.59 Corporate Directors 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 18.66 – 18.77 of these Contract Procedure Rules.

**18.60** **Supplier Suitability Assessment and Conditions of Participation**

Corporate Directors shall ensure that supplier suitability is assessed in consultation with the Head of Procurement or nominated representative and in accordance with the Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 and any re-enactment(s) of them. Conditions of participation may include legal and financial capacity and technical ability to perform the contract, including compliance with any national legislation and City Council policies and procedures. Where applicable, Corporate Directors shall ensure that suppliers meet adequate and appropriate standards of health and safety.

18.61 Where required, supplier suitability assessments must include use of core information provided by the Cabinet Office, including the supplier debarment list. Where any decision is required to exclude a supplier, the Head of Procurement must be consulted.

18.62 Supplier suitability assessments should take place before each scheme is let or before being included into the relevant approved list(s), whichever is the earlier. During the lifetime of the contract re-assessment of supplier suitability should be undertaken at appropriate points in accordance with the above legislation.

18.63 Corporate Directors 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.

**18.64**  **Purchasing Cards**

Corporate Directors 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 have 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.

18.65 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.

**18.66 Invitations to Suppliers**

Procurement of schemes for works, goods 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, between £100,000 and £750,000 for Concessions), Corporate Directors shall refer to guidance and templates provided by the Procurement Team and ~~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 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, £750,000 for Concessions), Corporate Directors shall seek support from the Procurement Team and 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
* Where the estimated value of the scheme exceeds the relevant Procurement Act 2023 threshold, Corporate Directors shall seek support from the Procurement Team to follow permitted procedures for inviting tenders and awarding contracts, making use of the flexibility of the legislation to maximise value for the City Council.
* In specific exceptional circumstances, **for procurement valued above the relevant threshold stated in the Procurement Act 2023**, there will be occasions where a competitive quotation or tender process is not possible and Direct Award of a contract is permitted as detailed below (in addition to awards permissible under Frameworks established by contracting or relevant authorities, see 18.55, or below threshold awards approved as exemptions to Contract Procedure Rules, see 18.94/Appendix C) . Where this is identified, the Corporate Director of Finance and Resources can, in Consultation with the Head of Legal authorise the subsequent Direct Award provided a record is kept of the rationale for the decision via the appropriate corporate governance decision making process (which must include reference to an 18.94 exemption where applicable), and published in the relevant transparency notice (See Appendix B).  Under no circumstances will retrospective approval of a Direct Award be allowed.

N. B. Direct Award is when a public contract is awarded without a competitive tendering procedure and the public contract is placed directly with the supplier of the contracting authority’s choosing. For procurement valued above the relevant threshold stated in the Procurement Act 2023, a contracting authority may only directly award a public contract when section 41 (and one or more of the justifications in Schedule 5), section 42 or section 43 apply. Section 44 sets out obligations in relation to publishing a transparency notice when making a Direct Award. The content of the transparency notice is included in regulation 26 of the Procurement Regulations 2024 (Regulations).

* The Health Care Services (Provider Selection Regime) Regulations 2023 contain specific procedures for inviting providers or directly awarding contracts. Corporate Directors shall seek support from the Procurement Team to carry out a compliant procurement procedure for all schemes falling within this legislation. Direct Awards within this legislation should follow the guidance set out above.

18.67 Quotations and Tenders as detailed in 18.66 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)
* when the arrangement is for in-house delivery by the City Council or a subsidiary company in accordance with the counter-party exempted contracts – vertical arrangements exemption as per paragraphs 18.34 – 18.37 above
* when the arrangement is through co-operation with another public body in accordance with the counter-party exempted contracts – horizontal arrangements exemption as per paragraphs 18.38– 18.40 above.

18.68 Corporate Directors, shall ensure that the most suitable arrangement, demonstrating Best Value, is secured for the City Council and the details are recorded in writing and appropriate approval is sought for the City Council’s financial commitment under any of these arrangements.

18.69 Corporate Directors 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.

18.70 In consultation with the Head of Legal, the Head of Procurement shall ensure that the City Council’s e-tendering system complies with the requirements of the Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 and any re-enactment(s) of them.

18.71 Other methods such as e-auctions and dynamic markets may be used to invite and receive quotations and tenders electronically, provided there is no conflict with the requirements of the Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 and any re-enactment(s) of them, otherwise the requirements of these Contract Procedure Rules shall be complied with.

18.72 Corporate Directors shall ensure that each individual scheme be packaged to secure Best Value for the City Council.

18.73 Corporate Directors shall ensure that suppliers invited to provide quotations or to submit tenders are contacted and (regardless of the process being used) a record maintained on the City Council’s e-tendering system of the requests made and their agreement to provide quotations or submit tenders.

18.74 Corporate Directors shall ensure that where there is a multiple stage process for inviting quotations or tenders then any criteria to be used for shortlisting suppliers throughout such process is robust and transparent and shall make use of the assistance available from the Procurement Team. Shortlisting stages must not be used for contracts valued below the relevant Procurement Act 2023 threshold.

18.75 Corporate Directors 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 the Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 and any re-enactment(s) of them 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 shall ensure that invitations to suppliers to provide quotations or to submit tenders for works, goods 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, goods 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
* proposed Conditions of Contract
* adequate and appropriate key performance indicators and contract management arrangements
* other information required by the prevailing public procurement legislation, including contract risks and preliminary market engagement
* any other relevant items that are considered necessary

18.77 Corporate Directors 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 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 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 Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 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, with any unfair advantages mitigated.

**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 Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 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 material change to the specification or the proposed terms and conditions that are to apply, which has not been specifically provided for in the tender documents, an official order must not be issued or a formal contract must not be made, and the quotation or tender process must be re-commenced.

**18.82** **Discussion and/or Clarification** **Notification**

Corporate Directors may authorise such discussion and/or clarification within a specific scheme, provided the special circumstances are recorded, including a record of the discussion and/or clarification. Corporate Directors shall notify 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 before award of a contract or order.

**18.83**  **Acceptance of Quotations and Tenders**

Whenever the City Council’s e-tendering system is not used as per 18.69, Corporate Directors shall ensure that a record of the quotations received be prepared, signed, dated and timed, which record shall include the date and time each quotation is received, together with the main terms of each quotation (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 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 shall ensure that quotations and tenders received are adequately and appropriately evaluated in accordance with the Quotation/Tender Evaluation Criteria recommended by the Procurement Team or set out in Procurement Team guidance.

18.86 Corporate Directors shall ensure that errors or discrepancies found in quotations or tenders be adequately and appropriately dealt with. Where such error or discrepancy cannot be adequately and appropriately dealt with the matter shall be immediately referred to the Head of Procurement or nominated representative for a decision.

18.87 Corporate Directors shall ensure that the quotation or tender which secures Best Value for the City Council be accepted, provided that there is no conflict with the Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 and any re-enactment(s) of them.

18.88 Corporate Directors shall ensure that a record is kept of the withdrawal of a quotation or tender by a supplier within a specific scheme together with the circumstances of such withdrawal.

18.89 Corporate Directors shall ensure that where the accepted quotation or tender is changed following the rectification of errors or discrepancies and/or post-quotation/tender clarification, a full audit trail of such amendment(s) is maintained on the tender file and approved by the Corporate Director (or their nominated representative).

18.90 Corporate Directors 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 sufficient information to understand the rationale for the score awarded. Where a scheme falls within the UK public 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 Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 as applicable.

18.91 Each scheme shall be let on the authority of a Corporate Director following a spend decision having been taken in line with 18.9 and 18.10 by an appropriate decision-maker (i.e. for executive business a Corporate Director or other specifically delegated officer), Executive Member /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 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 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 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, 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 Corporate Director must use a Request for an Exemption from Procurement Procedures Form as published by the Procurement Team, this must be sent to the Head of Procurement or nominated representative. Further guidance on justification for an exemption is provided at Appendix C of these Contract Procedure Rules. Under **no** circumstances will a retrospective exemption be approved.

18.95 Note that Exemption from Procurement Procedures does not constitute approval to spend, which must be obtained from the relevant decision-maker, except in the case of emergency, as per 18.94, where expressly indicated by the Section 151/Chief Finance Officer on the e-form referred to at Appendix C.

**18.96** **Orders and Contracts**

All schemes regardless of value must be evidenced by means of an official order or a formal contract (a simple contract or contract under seal). 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 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 18.64 – 18.65 of these Contract Procedure Rules.

18.98 Corporate Directors 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 (see 18.104 below) 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, have authority to make contracts under seal. Simple contracts may only be made in accordance with paragraph 18.105 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, i.e. by telephone or e-mail, Corporate Directors shall ensure that an official confirmatory order be issued through the City Council’s main financial system without undue delay. Such official confirmatory order shall be clearly marked “CONFIRMATION ONLY”.

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 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.
* the Head of Legal (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 Directors concerned shall ensure that an official order or a simple contract relating to such scheme is made in such terms that have the prior approval of a Legal Services Manager. For the avoidance of doubt, such official order, as well as such simple contract, must be signed by at least two signing officers.

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

* the Corporate Director must issue an official order or make a simple contract where the value of any scheme is less than £25,000. Such official order or such simple contract must be made in such terms that have the prior approval of the Head of Legal and be signed by at least one authorised officer.
* the Corporate Director must make a simple contract where the value of any scheme is between £25,000 and £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 be signed by at least one authorised officer
* the Head of Legal (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 Directors concerned 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 in accordance with paragraph 18.104 of these Contract Procedure Rules
* Corporate Directors may authorise, in writing, other officers to sign official orders or simple contracts or to authorise such orders or contracts electronically in a main financial system on their behalf at a value agreed with the Chief Finance Officer provided Corporate Directors are satisfied that their officers have received relevant financial training as approved by the Chief Finance Officer (Financial Regulations) and the relevant form has been completed.
* Corporate Directors shall supply the names and signatures of signing officers together with the corresponding signing/ authorising limits to the Chief Finance Officer. Corporate Directors shall prepare and keep up-to-date a register of names and signatures of signing officers together with the corresponding signing limits, which shall be made available to the Chief Finance Officer upon request.

18.106 Corporate Directors 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 City Council’s standard purchase order terms of agreement.
* each official order sed 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 18.82 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:

* 1. 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
  2. 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
  3. has been convicted of any offence under the Bribery Act 2010
  4. 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, 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 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 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 Head of Procurement or nominated representative 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 shall ensure that as soon as possible after any formal contract has been made, varied or terminated 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 City Council’s Contracts Register.

18.109 The award, variation or termination of all contracts of value exceeding the relevant UK public 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 Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023. This obligation applies to contracts awarded regardless of whether they fall within the UK public procurement legislation or are of a value likely to exceed the relevant UK threshold figure for the time being in force. A list of required notices is provided at Appendix B of these Contract Procedure Rules.

**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 Procurement Act 2023, the Health Care Services (Provider Selection Regime) Regulations 2023, Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 or the Concessions Contracts Regulations 2016 (as applicable during the life of the contract). 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 relevant legislation, 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 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 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 must be consulted where it is contemplated that any works, goods 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 shall ensure that each official order or formal contract for works, goods or services contains adequate and appropriate provisions for supervising and monitoring supplier performance including the quality and standard of such works, goods or services.

18.115 During the performance of an official order or formal contract for works, goods or services, Corporate Directors shall ensure that supplier performance, compliance with specification, expenditure, progress, risk and user satisfaction are monitored and also, where necessary, ensure that adequate and appropriate actions are taken to rectify and overcome any short- comings.

18.116 For contracts exceeding the Procurement Act 2023 threshold figure for the time being in force, specific obligations apply during the lifetime of the contract, which may include publication of performance notices and KPIs. The Head of Procurement of nominated representative must be consulted to ensure compliance with these obligations.

18.117 Corporate Directors shall ensure that claims received from suppliers of works, goods 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 for consideration of the City Council’s legal liability as soon as they are notified to the City Council.

18.118 Corporate Directors shall ensure that claims made against suppliers of works, goods or services or other external organisations be referred to the Head of Legal for consideration of the City Council’s legal liability as soon as they become reasonably apparent.

18.119 Corporate Directors shall ensure that where suppliers are required to provide guarantees then such guarantees are adequate and appropriate and underwritten by an insurance company or similar financial institution.

**18.120 Payments**

Corporate Directors shall ensure that payments to suppliers for works, goods or services are certified and made in accordance with:

* the appropriate term(s) of the official order or formal contract
* Financial Regulations
* requirements of the Procurement Act 2023, the Health Care Services (Provider Selection Regime) Regulations 2023, Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 or the Concessions Contracts Regulations 2016 (as applicable during the life of the contract)

**18.121 Performance Security Arrangements**

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

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

* 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.

18.123 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 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 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 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 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 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 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 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 timescale 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 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 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.

**Appendix A: Contract Thresholds**

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

|  |  |  |
| --- | --- | --- |
| **Lifetime Contract Value**  **(net of VAT)** | **Quotation / Tenders** | **Exceptions** |
| **Procurement**  £0 - £24,999  **Schools**  £0 - £4,999 | 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 - £99,999  **Schools**  £5,000 - £49,999 | Obtain at least 3 quotations in writing | * 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 18.66 of the CPRs.      * Corporate Directors~~,~~ however, may elect to seek tenders in lieu of quotations |
| **Procurement**  £100,000 +  **Schools** £50,000+ | Obtain at least 3 tenders in writing | * 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 18.66 of the CPRs. |

**Appendix B: Procurement Act 2023 Notices**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Ref** | **Notice Name:** | **When to use and publish:** | | **Purpose:** | **Notes:** |
| UK1 | Pipeline Notice | Within 56 days of 1 April 2025 (yearly). The ‘reporting period’ is 18 months. | | To allow suppliers to see future planned procurements | Mandatory for Orgs £100m+ spend, minimum of all procurements over £2m. |
| UK2 | Preliminary Market  Engagement Notice | A PME should occur prior to the publication of either:   * a tender notice or;   a transparency notice | | To alert the market to opportunities to engage before the procurement starts or engagement that has been undertaken. | Not mandatory to use however must comply or justify in the tender notice if not used. All PME info must be shared in notice or tender pack.  Must be submitted if any PME has been undertaken – link to page detailing what qualifies as this. |
| UK3 | Planned Procurement  Notice | Published at least 40 days but no more than 12 months before the tender notice to have a timescale reductive effect (if appropriate) | | Can reduce the minimum tendering period to 10 days. Generally increases visibility too. | Not mandatory unless being used to reduce timescales. |
| UK4 | Tender Notice | Prior to publication of any procurement opportunity except invitation to quote or further competitions. | | To notify suppliers and initiate tender. | Also used when making award by reference to a dynamic market |
| UK5 | Transparency Notice | Published before awarding a contract under section 41 or 43 of the Procurement Act 2023 i.e direct award. | | To provide transparency to direct award and provide opportunity for market to review justifications for the intention of the contract to direct award a contract. | Can be followed swiftly by a CDN, or allow time to pass (standstill) |
| UK6 | Contract Award Notice | Initiates standstill and updates stakeholders on the award decision made. Contains details of SME/VCSE status, the associated persons of the intended supplier.  Where more than £5m, details of the suppliers who were unsuccessful.  Confirms assessment summaries have been issued to all participants. | To inform market of the outcome of a procurement.  To initiate standstill period, bringing transparency to decision making. Suppliers will consider this as well as the assessment summaries. | | Regulations 27 to 30 set out the information to be included – link to this or include the information first hand.  Information on exceptions. |
| UK7 | Contract Details Notice | Sets out that a CA has entered a public contract.  Publication within 30 days of the contract being entered into (except light touch contracts - 120 days).  Where £5m+, also a copy of the contract (redacted). | Informing all that the contracting authority has entered a contract and allows access to the contract in some cases.  Exceptions to notice: Private utilities and direct award: user choice) | | Must be published within 30 days of the contract being entered into (except with light touch contracts for which the period is 120 days) |
| UK8 | Contract Payment Notice | Published quarterly, within 30 days of end of quarter. | To provide details of each (and every) supplier payment over £30,000 (inc VAT) made under a public contract in such a way that it is linked to that contract. | |  |
| UK9 | Contract Performance Notice | Must be published at least once every 12 months during the life-cycle of the contract and on termination of the contract. | The contract performance notice fulfils two functions:  a. recording the performance of suppliers against key performance indicators (KPIs) where section 52(1) of the Act applies; and  b. recording information relating to particular breaches or failure to perform a public contract except where the breach results in a contract being terminated in full. | | Must also be published within 30 days of supplier poor performance / breach of contract |
| UK10 | Contract Change Notice | Published before modifying a contract to add services, suppliers, or costs. If the contract's estimated value is more than £5 million, the contracting authority must publish a copy of the redacted modified contract or the modification within 90 days of executing the modification | Requirement under the Procurement Act 2023 when a public or convertible contract is modified.  Can be used with a voluntary standstill. | | If a voluntary standstill period is used, it must not be less than 8 working days. |
| UK11 | Contract Termination  Notice | Published within 30 days of the public contract ending. | This describes the nature of the end of the contract. That might be natural end. Includes estimated value. | | Contract Termination Notices allow greater scrutiny of what has happened during the life of a contract |
| UK12 | Procurement Termination  Notice | The notice must be published within 30 days of the decision not to award a contract. | To inform suppliers and the public that a contracting authority has decided to discontinue a procurement. | | Timely notification is important to avoid suppliers incurring unnecessary costs in relation to the procurement. |
| UK13,14,15,16 | Dynamic Market Notices | A Dynamic Market Notice will get updated as it passes each stage. | Mandatory where a dynamic market will be advertised, established, awarded or where it will be terminated.  NB use a tender notice to commence competition by reference to a DM. | | Information provided in this notice should be sufficient to enable suppliers to determine whether they meet the conditions for membership and can decide whether they wish to apply to join the dynamic market. |
| UK17 | Payment Compliance  Notice | Publish notice every six months. Published within 30 days of the end of the preceding six-month period. | To show that the Contracting authority have complied with the requirement to pay suppliers within 30 days of receiving an undisputed invoice, on payments over £30,000. | |  |

**Appendix C – Guidance on Exemption from Procurement Procedures**

* The Exemption from Contract Procedure Rules eForm, issued by the Head of Procurement, must be completed whenever a request is made to seek an exemption from the City Council’s Contract Procedure Rules.  An Exemption is **not** a formal governance approval to spend. A formal governance approval to spend must be obtained following an Exemption being approved, appropriate to the value of the decision unless in the case of an emergency express spend approval is indicated on the eForm by the Section 151/ Chief Finance Officer.
* Before seeking an exemption from the requirements to obtain tenders and quotations the Head of Procurement or their nominated representative must be consulted.
* Under no circumstances will a retrospective request for exemption from Contract Procedure Rules be considered.
* The exemption request must include all relevant information in order for a decision to be properly reached.
* The 3 available justifications for an exemption are:
  + The goods, works or services are specific to the supplier and for technical reasons cannot be provided by any other supplier.
  + The goods, 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 City 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 City Council can be achieved by not tendering.
* The form **must** be approved by the responsible Director or Head of Service 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.
* For the avoidance of doubt, exemptions to Contract Procedure Rules cannot be granted where the contract award would contravene the prevailing the UK Public Procurement Legislation.
* Notification of rejection/approval of any request will be sent to the originator via the Head of Procurement.
* Following approval of an exemption to Contract Procedure Rules, a Contract Award Information Request eForm must be completed to enable the Procurement Team to add the Contract to the City Council Contracts Register and publish the relevant transparency notices in accordance with the Procurement Act 2023 and the Health Care Services (Provider Selection Regime) Regulations 2023 and any re-enactment(s) of them.
* Full details of this process are provided on the Intranet or on request from the Procurement Team.