



Leicester
City Council

WARDS AFFECTED
All

Council

18th June 2015

REVISIONS TO THE CONSTITUTION

Report of the Monitoring Officer

1. PURPOSE OF REPORT

- 1.1 To agree revisions to the Council's Constitution
- 1.2 Article 16 of the Constitution imposes a duty to monitor and review the operation of the Constitution. This report proposes suggested amendments reflecting the on-going work to meet this duty and further suggests amendments arising from changes to Government Regulations.

2. RECOMMENDATIONS (OR OPTIONS)

- 2.1. **To agree the new Contract Procedures Rules (CPR) comprising Part 4G of the Constitution and attached as Appendix 1**
- 2.2. **To agree the associated amendments to Part 3 of the Finance Procedure Rules (FPR) at Part 4F of the Constitution and attached as Appendix 2**
- 2.3. **To agree a revision to Article 6 (Part 2, Key Decisions) as per paragraph 3.10 below**
- 2.4. **To agree changes to the Terms of Reference for Employee's Committee as set out in Appendix 3 attached**
- 2.5. **To agree the changes to the functions of the Licensing Sub Committees as set out in Appendix 4 attached**
- 2.6. **To agree a change to the Terms of Reference of the Health & Well Being Board to take account of its responsibilities in relation to the Better Care Fund, as per paragraph 3.15 below**
- 2.7. **To agree changes to the Officer Employment Procedure Rules found in Part 4I of the Constitution, as set out in Appendix 5, such as to ensure compliance with the**

new statutory dismissal procedures for the Head of Paid Service; Chief Finance Officer and Monitoring Officer

- 2.8. To agree the changes, set out in Appendix 6, to the Good Practice Guidance for Member involvement in Planning and Development Control decisions found in Part 5 of the Constitution**
- 2.9. To note an amendment to Rule 18 of Part 4B (Access to Information Procedure Rules) which requires the publication of a wide range of “officer decisions” under new statutory provisions relating to openness and transparency.**

3. REPORT

Contract Procedure Rules (Part 4G)

- 3.1. The CPR are a legal requirement for the Council and set out the rules and processes which must be followed when entering into contracts for the purchase/hire of goods, disposal of assets and purchase of works and services.
- 3.2. Over the past year, a number of changes to council policy, procurement legislation and the Council’s procurement structure have taken place which mean the rules need to be updated. Additionally a general need to update the CPR to address issues and improve procurement processes has been identified.
- 3.3. New CPR have been drafted in consultation with senior management and relevant service areas across the Council, including Finance, Legal and Internal Audit. These are attached as Appendix 1. A draft was presented to Audit & Risk Committee in September 2014.
- 3.4. The key changes from the current rules:
 - Requirement to source low value contracts locally where possible and ensure quotes are sought from local companies where the opportunity is not advertised
 - Change in processes to reflect the existing ‘Procurement Activity Number (PAN) process (“Advertised Quotation”);
 - Thresholds changed so current £2.5k threshold is changed to £10k; giving greater flexibility of process compared to current policy for contracts between £1k and £10k, whilst maintaining the recent strategy of advertising these contracts wherever possible;
 - The current requirement to follow a full tender procedure for contracts over £30k is lifted to £75k to make procurement easier, and allow greater flexibility in how procurement processes are customised to the supply market to ensure they are accessible for local SMEs and Voluntary & Community Organisations (VCOs);;
 - New higher thresholds for works contracts to align with the higher EU thresholds for works;

- Removal of the network of Approved Procuring Officers which is replaced by reference to Specialist Procurement Teams and the new Procuring Officer, who will in most cases be somebody within one of those teams, as is already current policy;
- To reflect this centralisation, a lot more of the approvals are required from the Head of Procurement/City Barrister rather than Divisional Directors; however a procurement process cannot start or be awarded without the approval of the service area;
- Updated to reflect new legislation, notably the Public Contracts Regulations 2015 which came into force on 26th February 2015 and remove some of the inconsistencies;
- Greater flexibility in relation to clarifying/negotiating with bidders to encourage a more commercial approach;
- Rules focus on what must be done with guidance to be developed on what should be done; and
- Addition of (internal) Appendix 2 to allow the rules to be applied to schools more practically.

Finance Procedure Rules (Part 4F)

- 3.5. As part of the process of reviewing the Contract Procedure Rules it was identified that there was some cross-over between the CPR and FPR and therefore changes to the section 3 of the FPR would be needed to ensure there was no contradiction between the two sets of Rules. It is also proposed to amend the rule which effectively prevents payment in advance to contractors, as this is often justified, particularly when working with SMEs and VCOs. These proposed changes are set out at Appendix 2.

Key Decisions (Article 6)

- 3.6. The current definition of Key Decisions fails to distinguish between Decisions that require the exercise of judgement on the part of a decision-maker within the Council and those where the Council's role in "deciding them" is confined to agreeing to release monies. Specifically, the City acts as "accountable body" for the disbursement of Regional monies on schemes which are approved in substance by another decision-maker (such as the LLEP). In such cases the Council exercises no judgement in respect of the merits of the scheme, other than discharging its ongoing responsibility to ensure that the spending approved by bodies such as the LLEP is lawful, compatible with the grant conditions and is not against the public interest. In those circumstances the rigorous procedural requirements around Key Decisions ought to be dis-applied.
- 3.7. The current wording of Article 6 states that a matter will be regarded as a Key Decision where:

"In the case of one off or capital expenditure, spending of over £1m is to be committed on a scheme which has not been specifically authorized by Council"

3.8. Key Decisions are subject to a rigorous reporting regime which includes mapping them onto the appropriate Plan of Key Decisions at least 28 days before a decision is required, publication of notice of intention to make a Key Decision, and publication of reports five days in advance of the actual Decision. They are also subject to challenge on grounds that are broader in scope than those which apply to other Decisions.

3.9. However, where the Council acts as “Accountable Body” for certain schemes, it undertakes decision-making which often entails no financial impact for the Council and where it exercises no substantive decision-making role over the merits of a bid/scheme. Its role is merely to distribute monies provided by another body for schemes sanctioned by another body. The Council’s role is confined to ensuring that the spending approved is lawful, compatible with the grant conditions and is not against the public interest. It is these schemes which the proposed amendment aims to capture by altering the definition as follows:

“In the case of one off or capital expenditure, spending of over £1m is to be committed on a scheme except where:

(i) The scheme has been specifically approved by Council; or

(ii) The scheme is not a city council sponsored scheme, and constitutes city council expenditure solely by virtue of the council receiving and disbursing external grant (including accountable body arrangements).”

3.10. The only legal definition for Key Decisions comes from the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which states:

Regulation 8: Key decisions

(1) In these Regulations a “key decision” means an executive decision, which is likely—

(a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority’s budget for the service or function to which the decision relates; or

(b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.

3.11. It is submitted that accordingly the focus of the intention of Parliament was to capture as Key Decisions those decisions where the Council is exercising substantive decision-making authority, and that the amendment to Article 6 is justified as saving unnecessary expenditure of Council time and resources.

3.12. All Executive Decisions (Key or Non-Key) remain subject to the power of call-in, and the proposed amendment does not alter this.

Employees Committee – ToR

- 3.13. Appendix 3 brings the Terms of Reference for Employees Committee up-to-date. Many of the functions listed in the current version have already been removed through revised employment policies (whereby, for example, there no longer exists a “Member Appeal” within the Grievance procedure). Other aspects are not up-to-date with current legislative requirements (for example, the requirement to designate the Employee’s Committee to act as the Council’s Remuneration Committee)

Licensing Committee – ToR

- 3.14. The Terms of Reference for Licensing and Public Safety Subcommittees has been updated to reflect the nature of the work that each of the two subcommittees actually undertake, and within this exercise to make it clearer what matters will trigger the need for a Member-level decision versus those matters which will otherwise be decided by Officers.

Health & Well Being Board – ToR

- 3.15. The Terms of Reference for Board has been updated to include a specific reference to responsibility for the Better Care Fund. This follows a recommendation from a recent 360 degree audit of the Better Care Fund (BCF), which is jointly the responsibility of the CCG and the City Council. Section 195 of the Health and Social Care Act 2012 describes one of the functions of the Health and Wellbeing Board (HWB) as a duty to promote integrated working. The HWB has a special status and responsibility in the delivery of the Better Care Fund and NHS England guidelines require that the BCF Submission must be approved by the HWB. This requirement is broadly incorporated into the HWB Terms of Reference (ToR) within ‘Responsibilities’ at Section 3.2 to *‘Develop and agree the priorities for improving the health and wellbeing of the people of Leicester and tackling health inequalities’* and at Section 3.9 to *‘Ensure that the work of the Board is aligned with policy developments both locally and nationally’*. The ToR have not been updated to specifically include the delivery of the BCF as a responsibility/purpose. It is therefore proposed to add a ToR as follows:

3.14 The Board will agree Better Care Fund submissions and have strategic oversight of the delivery of agreed programmes

Officer Employment Procedure Rules (Part 4I)

- 3.16. The law changed on 11th May 2015 regarding the procedures for the dismissal of the Local Authority’s Head of Paid Service, Monitoring Officer and Director of Finance. These are classed as “protected posts” within the Local Authority senior officer structure (because between them they undertake statutory functions to guarantee that the Council acts lawfully and under a regime of good governance procedures), and

consequently there have, since 2001, been in place special provisions pertaining to the procedures to be applied by a Local Authority when seeking to discipline or dismiss such an Officer. In essence these provisions entailed the appointment of a Designated Independent Person (DIP) to investigate and report upon the allegations.

- 3.17. The Government's view was that the DIP procedure was unnecessarily burdensome in terms of being bureaucratic, expensive and overly time-consuming. The Local Authorities (Standing Orders)(England) Regulations 2001 were amended by the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015 to introduce a new requirement which dispenses with the 'DIP' and instead makes it a pre-requisite that dismissal of these "protected officers" (i) can only take place after a decision of Full Council and (ii) at least 20 working days before going to Full Council must be referred to a "panel" on which "independent persons" shall be invited to sit, the function of which "panel" shall be to give its views and make recommendations to Full Council.
- 3.18. At this stage the statutory requirements must be referenced in the Council's Standing Orders (See Appendix 5), however it is right to say that the finer details of the dismissal procedures are yet to be worked out. The JNC terms and conditions for such Officers have not been re-negotiated nationally (they still make reference to the 'DIP') and the law fails to account for basic "legal" considerations such as the right to a fair and impartial investigation (which is likely to mean "external" investigation given the seniority of the Officers involved) and the right to an appeal procedure (made extremely difficult where Full Council is the first-line decision-maker/dismissor).
- 3.19. In due course (after national negotiations are concluded) it is proposed that Employees Committee will be asked to sign-off a compliant dismissal procedure for the City. It is not a matter which strictly falls to be defined within the Constitution, or to be decided by Full Council. The only legal requirement is that the Full Council incorporates reference to the new procedures in its Standing Orders, and Recommendation 2.6 is designed to achieve this aim.

Planning Good Practice Guidance

- 3.20. The Good Practice Guidance for Member involvement in Planning and Development Control decisions has been updated in light of its operation over the previous three years. Appendix 6 identifies the proposed revisions. In summary these cover matters such as:
 - Clearer guidance on procedures to be followed when a Member lodges their own Planning Application
 - More helpful guidance on what to do where a Member's family or friends submit an application
 - When and how PDC Members may express a view on an application (either their own or on behalf of a constituent) which then (i) is or (ii) is not referred to Committee.
 - Updated sections on "lobbying"; "membership of external bodies" and "site visits"
 - Miscellaneous other matters

Publication of Officer Decisions (Part 4B, Rule 18)

3.21. The Openness of Local Government Bodies Regulations 2014 introduced (from 6th August 2014) a requirement on Council's to publish a new range of "officer decisions". The type of decision covered is defined as follows in Regulation 7:

(2) A decision falls within this paragraph if it would otherwise have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body participates, but it has been delegated to an officer of that body either—

(a) under a specific express authorisation; or

(b) under a general authorisation to officers to take such decisions and, the effect of the decision is to –

(i) grant a permission or licence;

(ii) affect the rights of an individual; or

(iii) award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position

3.22. Associated Guidance issued by the DCLG gives examples of 'decisions' that should be recorded to include:

- decisions about awarding contracts above specified individual or total values (the values will vary according to the relevant council or local government body);
- a decision to carry out major road works;
- determination of licencing applications, building control decisions and notices; and
- decisions to give listed building consents.

3.23. Where decisions are already required to be published by other legislation, they do not need to be recorded again provided the record published includes the date the decision was taken and the reasons for the decision.

3.24. Decisions that do not need to be recorded might include the following examples:

- routine administrative and organisational decisions such as giving permission to a local society to use the authority's premises;
- decisions on operational matters such as day to day variations in services;
- decisions to give business relief to individual traders;
- decisions to review the benefit claims of an individual applicant; and
- decisions taken in response to requests under the Data Protection Act 1998 or the Freedom of Information Act 2000.

3.25. The requirements are legislative and therefore it is within the jurisdiction of the Monitoring Officer to amend the Constitution in order to give effect to them. However it was felt to be appropriate to reference the changes within this report given that it deals throughout with changes/updates to the Constitution.

3.26. The change to Rule 18 will be to add a sub-paragraph (2) as follows:

RULE 18 - Record of decisions

(1) *The record of an Executive decision produced by the proper officer under Rule 4(e) shall comprise:*

- i. a record of the decision including the date on which it was made*
- ii. a record of the reasons for the decision*
- iii. details of any alternative options considered and rejected by the decision-maker*
- iv. a record of any conflict of interest declared by the decision-makers and*
- v. a note of any relevant dispensation granted.*

(2) All officer decision-making which falls within Regulation 7 of the Openness of Local Government Bodies Regulations 2014 shall be published in line with those statutory requirements.

4. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

4.1. Financial Implications

There are no significant direct financial implications from changing the Contract Procedure Rules, which are aimed at ensuring procurement activity derives best value and maximum economic benefit for Leicester. It is anticipated that the resource required to conduct the processes set out is already in place in the Council's procurement teams. The proposed changes to the Finance Procedure Rules regarding release of monies by the Council acting as accountable body are designed to streamline existing processes, saving unnecessary expenditure of Council time and resources and enabling the Council to act swiftly in its accountable body roles. – Colin Sharpe, Head of Finance, ext. 37 4081.

4.2. Legal Implications

Legal Services have been consulted in drafting the new Rules and have advised. The relevant applicable law derives from the Treaty on the Functioning of the European Union. The current law is in the Public Contracts Regulations 2015

The legal implications of the proposed changes to Article 6 are dealt with at paragraphs 4.6 to 4.8 above.

The legal implications of the other proposals are dealt with in the body of the report

Other Implications

OTHER IMPLICATIONS	YES/ NO	Paragraph/References within the Report
Equal Opportunities	Yes	Procurement has the potential to impact on all of these implications, and the
Policy	Yes	

Sustainable and Environmental	Yes	guidance which is being developed to accompany these Rules will detail how this should be done. The centralisation of procurement activity to a fewer number of professionals will help ensure this is done in a consistent and proportionate manner.
Crime and Disorder	Yes	
Human Rights Act	Yes	
Elderly/People on Low Income	Yes	
Corporate Parenting	Yes	
Health Inequalities Impact	Yes	
Risk Management	Yes	Risk Management and Internal Audit have been consulted when developing these new procedures which have been drafted to provide appropriate controls to risks that occur during all procurement processes. The Rules sit alongside the Council's Risk Management Strategy and Policy.

5. Report Author

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**PART 4G:
CONTRACT PROCEDURE RULES**

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PREAMBLE

Defined words are shown with initial capital letters and definitions given/signposted in Appendix 1 at the end of these Rules.

1. The Contract Procedure Rules

- 1.1 These Contract Procedure Rules are a legal requirement and are part of the Council's Constitution. Section 135 of the Local Government Act 1972 requires every local authority to make standing orders with respect to Contracts for the supply of Goods or for the execution of Works and provides that local authorities may make standing orders in respect of other contracts. Contract Procedure Rules fulfil these statutory requirements. Contract Procedure Rules set out the basic principles that must be followed by everyone proposing to enter into any Contract on behalf of the Council. Following these Contract Procedure Rules ensures that the Council meets its legal obligations and therefore it is important that all officers understand, apply and adhere to Contract Procedure Rules.
- 1.2 The Public Contracts Regulations 2015, which are derived from EU public procurement law, also require the Council to follow specific processes for certain contracts. Contract Procedure Rules are designed to ensure that open, fair and transparent processes are applied throughout the whole commissioning and procurement cycle in order to help secure Best Value and continuous improvements for the Council and protect the Council (and its officers and members) in the event of challenge and dispute.
- 1.3 Contract Procedure Rules apply to all the Council's departments (including arrangements with Voluntary & Community Sector Enterprises (VCSEs). This means that every department, internal trading department and organisation or external partner managing Contracts on the Council's behalf must comply with the Contract Procedure Rules.
- 1.4 If there is any doubt or lack of clarity as to the meaning or application of these Contract Procedure Rules, officers must seek advice from Procurement Services and/or Legal Services.

2. Aims

- 2.1 These Contract Procedure Rules aim to:
 - 2.1.1 achieve Best Value and deliver savings from the market;
 - 2.1.2 achieve accountability and transparency at all levels within the Council, and ensure an adequate audit trail is maintained;
 - 2.1.3 ensure that officers comply with legal requirements and follow proper, fair and proportionate procedures for the involvement and selection of Bidders and the award of Contracts;
 - 2.1.4 ensure that all procurement processes reflect appropriate quality requirements and that Submissions are judged by objective criteria set out in Invitation to Tender or Request for Quotation documentation;

- 2.1.5 ensure that all procurement processes are delivered within an appropriate legal framework;
- 2.1.6 ensure that appropriate levels of monitoring exist to ensure compliance and that these Contract Procedure Rules are regularly reviewed to take account of new requirements;
- 2.1.7 ensure that as many potential suppliers as possible are able to identify opportunities and to put themselves forward;
- 2.1.8 ensure that the Council's wider policy objectives are promoted (including environmental sustainability, economic regeneration, business continuity);
- 2.1.9 reduce the risk of fraud, bribery and corruption.

3. Compliance with Contract Procedure Rules

- 3.1 Where the Council fails to comply with procurement legislation, it leaves itself open to challenges from Bidders/Contractors who may bring claims for damages against the Council. Non-compliance may also lead to the Council being fined and/or having funding withdrawn.
- 3.2 Failure to comply with the provisions of Contract Procedure Rules may be considered as misconduct and result in disciplinary action. Where it is considered appropriate, misconduct may be reported to the Police with potential criminal consequences for any person involved.
- 3.3 Responsibility for compliance with Contract Procedure Rules rests with anyone who carries out procurement of Goods, Services or Works for, or on behalf of, the Council.

4. Procurement Guidance

- 4.1 The Head of Procurement, where appropriate in consultation with the City Barrister, may from time to time publish procurement processes and/or guidance to amplify and fine tune the steps to be taken as part of procurement and contract management processes or vary the standard procurement documents.
- 4.2 Where there is any ambiguity or conflict between these Contract Procedure Rules and or guidance issued under this Rule, the provisions of Contract Procedure Rules shall take precedence.

5. Processes

- 5.1 Tender and Quotation processes assist Procuring Officers in meeting their obligation to deliver a fair and transparent procurement process that encourages competition and delivers good value solutions that meet the requirements of the Council.
- 5.2 The higher the value and risk, the more rigorous the process. The Council recognises the administrative cost involved in tendering Contracts and provides for less exhaustive processes for lower value Contracts. These Contract

Procedure Rules set value levels and describe how these will apply together with the procedures that must be followed. A risk assessment should be conducted as required by the Council's Risk Management Strategy and Policy and this will inform the procurement process and documentation in many ways.

- 5.3 The use of electronic quotation and tendering processes helps to reduce the burden, improve transparency and reduce the Council's carbon footprint.
- 5.4 The procedures are designed in incremental steps depending upon the value of the Contracts. Contracts that exceed the EU Thresholds are subject to the most rigorous processes.

6. Transparency

- 6.1 The Council is required to ensure that its processes are fair and transparent and will publish data in accordance with the requirements stated in the Local Government Transparency Code 2014 and any additions or amendments thereto.

7. Social Value

- 7.1 On 31st January 2013 the Public Services (Social Value) Act 2012 came into effect. The Act requires the Council under certain circumstances to consider how the economic, social and environmental wellbeing of Leicester may be improved by Services that are to be procured, and how procurement activity may secure these improvements.
- 7.2 The statutory requirements of the Public Services (Social Value) Act 2012 only apply to Services Contracts over the EU Threshold; however, the Council will, wherever possible, implement the principles of social value procurement into the commissioning and procurement of all Large and EU Contracts, and where appropriate Intermediate Contracts.

8. Collaboration

- 8.1 There may be demonstrable benefits of collaborative procurement with the wider public sector, as well as (where permitted) the private and voluntary sectors, and the Council should consider taking advantage of these where appropriate and including the opportunity for others to join in contracts that it is procuring.

9. Best Value & the Delivery of Savings

- 9.1 All officers must be mindful of their responsibility in securing Best Value through all procurement activity and must consider how savings can be delivered.

10. Contracts Database and Electronic Tendering System

- 10.1 Procuring Officers must record all Intermediate, Large and EU Contracts in the Contracts Database, which is part of the Electronic Tendering System.

- 10.2 With the introduction of the Electronic Tendering System, many of the requirements for security and segregation required for the processing of Submissions are covered by the security features built into the system. In addition the system is fully auditable.
- 10.3 In exceptional circumstances there may be occasions when use of the Electronic Tendering System is not appropriate or possible. E-mail and/or hard copy Submissions may be required.
- 10.4 Any reference in these Rules to “written”, or “in writing”, will be satisfied by an e-mail, a process within the Electronic Tendering System or any other Electronic Means.
- 10.5 Electronic auctions may be used, so long as, where applicable, Regulation 35 of the Public Contracts Regulations 2015 is complied with.

11. Contract Management

- 11.1 Contracts must be properly managed after they have been awarded to ensure compliance and continuous improvement. Therefore in addition to the processes by which Contracts are established, these Contract Procedure Rules also cover aspects of contract management which relate to ongoing Contract Variation, price control or termination of Contracts at any time during the contract period.
- 11.2 The majority of the ‘life’ of most contracts is spent in contract management and effective performance management will help ensure that the contract delivers what is intended at the intended price. Contracts should include an appropriate framework for contract monitoring, quality assurance and measurement of continuous improvement. The need to maintain proper and auditable records cannot be over emphasised.

GENERAL PROVISIONS

12. Status

- 12.1 In the event of any inconsistencies between the provisions of Contract Procedure Rules and the provisions of the law, then the provisions of the law shall prevail.
- 12.2 These Contract Procedure Rules:
- 12.2.1 are made under Section 135 of the Local Government Act 1972 and all other relevant enabling powers;
 - 12.2.2 are applicable to all members, officers and staff, including agency staff, interims and consultants, of the Council;
 - 12.2.3 are applicable to all departments of the Council, including the Council's trading organisations and organisations for which the Council is the accountable body;
 - 12.2.4 are applicable where the Council is acting as agent for another body (principal) unless the principal directs otherwise;
 - 12.2.5 must be adopted by any external Contractor that is acting as an agent of the Council and empowered to form contracts on behalf of the Council and by any person who is not an officer of the Council engaged to manage a contract on behalf of the Council;
 - 12.2.6 shall be interpreted so far as possible to ensure the aims set out at Rule 2 of these Contract Procedure Rules are achieved;
 - 12.2.7 are not applicable to expenditure between or within Council departments;
 - 12.2.8 are applicable to Maintained Schools, as detailed/amended in Appendix 2, but are not applicable to Academies (including Free Schools).

13. Scope

- 13.1 These Contract Procedure Rules are applicable to the formation of Contracts and to any matters as may arise in the process of managing Contracts including those which change, vary or terminate any Contract during its term, or extend its term.
- 13.2 These Contract Procedure Rules are applicable to all Contracts for the:
- 13.2.1 provision, supply, and/or hire to the Council of Goods, Works or intellectual property;
 - 13.2.2 for the provision of Services, including consultancy, to the Council;
 - 13.2.3 Works and Services Concession Contracts;
 - 13.2.4 disposal of capital assets;
- which may include Contracts from which the Council receives an income.

- 13.3 These Contract Procedure Rules apply to the award of a Contract where a sub-contractor or supplier is to be nominated by the Council to a main Contractor.
- 13.4 These Contract Procedure Rules are not applicable to:
- 13.4.1 Contracts for the acquisition or disposal of any interest in land;
 - 13.4.2 Contracts of employment;
 - 13.4.3 Contracts for the lending or borrowing of money;
 - 13.4.4 Grants that are given to support the aims and objectives of an organisation or as gap funding, so long as they fall outside of the following definition of procurement (taken from the Public Contracts Regulations 2015): “the acquisition by means of a public contract of Works, supplies or Services by [the Council] from economic operators chosen by [the Council], whether or not the Works, supplies or Services are intended for a public purpose”;
 - 13.4.5 Functional arrangements with other public bodies, including arrangements which meet the criteria set out in the Regulation 12 of the Public Contracts Regulations 2015, so long as the advice and prior written approval of the City Barrister has been obtained.

14. Private Interests

- 14.1 No member, officer or agent of the Council, shall improperly use their position to obtain any personal or private benefit from any Contract entered into by the Council.
- 14.2 Employees shall comply with the Code of Conduct for Officers (Appendix V of the Local Conditions of Service). Section 7 of the Code deals with ‘Balancing Personal and Work Life’ and includes requirements for registering interest and maintaining the highest standards of probity and fairness.
- 14.3 Members’ interests are governed by the Code of Conduct for Members. This includes the requirement for members to declare interests in Contracts to the City Barrister.
- 14.4 Whenever any member, officer or other person involved in a procurement process on behalf of the Council has any interest, or could be perceived to have any interest, in a Bidder or potential Bidder, this interest must be notified in writing to the Procuring Officer, or (e.g. in the case of the Procuring Officer), to the Head of Procurement and/or City Barrister. Any such interest must be declared even if it has been declared on an earlier occasion, either generally or in relation to another Contract/procurement exercise. The Head of Procurement, in consultation as appropriate with the City Barrister, will decide how, if at all, the process, or the role of the person concerned, should be adjusted to ensure fairness can be demonstrated, and to reduce any potential accusation of misconduct, eliminate bias and maintain the integrity of the process.

THRESHOLDS

15. Financial Parameters

- 15.1 Before the procurement of any Contract is begun the Commissioning Officer must calculate its Estimated Value in accordance with this Rule.
- 15.2 The Estimated Value shall be calculated as follows:
- 15.2.1 Where the Contract period is fixed the Estimated Value shall be the total estimated maximum value of the Goods, Services or Works to be supplied over the period covered including any extensions to the Contract;
 - 15.2.2 Where the Contract period is indeterminate the Estimated Value shall be calculated by multiplying the estimated average monthly value by 48;
 - 15.2.3 For trials or pilots the Estimated Value shall be the value of the scheme or Contracts which may be awarded as a result;
 - 15.2.4 For Concessions the Estimated Value shall include the total income, regardless of source, to the Contract or over the Contract period;
 - 15.2.5 The Estimated Value must exclude Value Added Tax (VAT) but must include all other taxes and duties;
 - 15.2.6 Periodic purchases for the same requirement, whether that is from the same or different contractors, must be aggregated over a minimum of a 12-month period;
 - 15.2.7 Requirements for any department or section of the Council should be included (no department or section is permitted to regard itself as a 'discrete operational unit' within the terms of the Public Contracts Regulations 2015);
 - 15.2.8 Where the Council may be contributing only part of the total value of a Contract, it is nevertheless the total Estimated Value that must be applied in determining the correct procedures to be applied under these Rules;
 - 15.2.9 The value should be calculated considering the total consideration that the Contractor(s) will receive in return for carrying out the Contract, whatever the nature or source of the consideration.
- 15.3 Where there is any doubt as to the Estimated Value then the procedure for the higher categorisation must be used.
- 15.4 The requirement shall be looked at as a whole and must not be artificially split to avoid competition.
- 15.5 In calculating the Estimated Value, the Commissioning Officer shall take account of historic cost and an assessment of future trends or, where the requirement is new, the best estimate of value available at the time.

15.6 The following table sets out the thresholds for categorisation of Contract into value bands based on the Estimated Value as calculated following the principles set out above.

Contract Categorisation	Value	Value
	Goods & Services	Works & Concessions
Minor Contract	£0 - £1,000	£0 - £5,000
Small Contract	£1,000 - £10,000	£5,000 - £25,000
Intermediate Contract	£10,000 - £75,000	£25,000 - £250,000
Large Contract	£75,000 – EU Threshold	£250,000 – EU Threshold
EU Contract	Over EU Threshold	Over EU Threshold

15.7 Subject to the prior written approval of the Head of Procurement the Procuring Officer may make use of the “Small Lots” provision set out at paragraph 14 of Regulation 6 of the Public Contracts Regulations 2015, and therefore not aggregate the value of all requirements. The Procuring Officer must follow a procedure to award the Contract based on the value of that ‘Small Lot’ alone and how it would be categorised in the table in Rule 15.6 above.

APPROVALS & REPORTING

16. Procurement Plan

- 16.1 The Executive is responsible for periodically approving a Procurement Plan. The Procurement Plan will consist of a list of EU Contracts expected to be procured to alert members, the public and potential Bidder.
- 16.2 Before procurement of any EU Contract reaches the Advertisement stage, it must be approved either:
- 16.2.1 by the Executive through inclusion in the Procurement Plan; or
 - 16.2.2 by the Executive through a separate decision approving commencement of procurement; or
 - 16.2.3 by the Chief Operating Officer, in consultation with the Director of Finance and the City Barrister, through a separate decision approving commencement of procurement.
- 16.3 Where an EU Contract is being procured without an Advertisement stage, it must be approved by the Executive through either:
- 16.3.1 by the Executive through inclusion in the Procurement Plan; or
 - 16.3.2 by the Executive through a separate decision approving procurement; or
 - 16.3.3 by the Chief Operating Officer, in consultation with the Director of Finance and the City Barrister, through a separate decision approving procurement,
- Prior to the Contract being awarded.
- 16.4 The award of any EU Contract pursuant to a procedure approved as per Rule 16.2 or 16.3 is delegated to the appropriate Divisional Director in consultation with the Head of Procurement and the City Barrister.
- 16.5 The award of all non-EU Contracts is delegated to officers as set out in Rule 28 below.

17. Procurement Pipeline

- 17.1 The Head of Procurement will maintain a Procurement Pipeline and make this available on the Council's website to members, the public and potential Bidder, which will comprise:
- 17.1.1 the Procurement Plan; and
 - 17.1.2 a similar list of known Intermediate Contracts and Large Contracts.

18. Procurement Strategy

- 18.1 The Executive is responsible for periodically approving a Procurement Strategy, which will include the Council's approach to procurement and how procurement

and management of Contracts will contribute to the overall aims and objectives of the Council.

19. Monitoring & Reporting

- 19.1 The Audit & Risk Committee will receive a report at least annually to include:
- 19.1.1 Delivery of the Procurement Strategy;
 - 19.1.2 Achievement of the Procurement Plan;
 - 19.1.3 Compliance with these Rules, including a summary of Waivers;
 - 19.1.4 Any changes to these Rules made under Rule 20 below; and
 - 19.1.5 Any proposals for changes to these Rules to be made to Full Council.

20. Minor Amendments to these Rules

- 20.1 The Chief Operating Officer, in consultation with the Head of Procurement and the City Barrister, may from time to time amend the thresholds in the table in Rule 15.6.
- 20.2 The City Barrister, in consultation with the Head of Procurement, may from time to time amend these Rules:
- 20.2.1 To correct an error or clarify an ambiguity;
 - 20.2.2 To reflect changes in the management structure, working practices and responsibilities, e.g. as set out elsewhere in the Constitution; and
 - 20.2.3 To reflect changes in the law where otherwise these rules would not be constituent with the law;
- 20.3 If changes to these Rules are made pursuant to Rule 20.1 or 20.2 above, the City Barrister shall cause such changes to be published and the Constitution to be amended.

21. Periodic Review of the Rules

- 21.1 The Head of Procurement and City Barrister, in consultation with the Chief Operating Officer, shall at least every five years review these Rules and, if deemed appropriate, propose amendments to Full Council, following an initial report to Audit & Risk Committee.

22. Financial Approval

22.1 Before procurement of any Contract reaches the Advertisement stage, it must have financial approval from the appropriate officer(s), as set out in the table below:

Contract Categorisation	Financial Approval
Minor Contract	Budget Holder(s)
Small Contract	Budget Holder(s)
Intermediate Contract	Head of Service
Large Contract	Divisional Director and Head of Finance
EU Contract	Divisional Director and Head of Finance

EXCLUSIONS, EXEMPTIONS & WAIVERS

23. No Competition

- 23.1 The actions permitted under this Rule must be considered alongside the requirements of EU Directives, the Treaty on the Functioning of the European Union (TFEU), Acts of Parliament and UK Regulations, all of which take precedence over these Rules. Procuring Officers should seek advice from Procurement Services and Legal Services.
- 23.2 The Commissioning Officer may directly negotiate the award of a Contract without competition, to one or more Contractors for the following social care/education Services:
- 23.2.1 residential placements sought for an individual with a registered care provider of their choice;
 - 23.2.2 supported living Services sought for an individual with an appropriate care and support provider of their choice under the National Health Service and Community Care Act 1990;
 - 23.2.3 individual school placements sought for a child with Special Educational Needs (SEN);
 - 23.2.4 social care and special education packages managed by or on behalf of individual clients under the personalisation agenda; and
 - 23.2.5 where certain needs of an individual (whether an adult or a child) require a particular social care package, which is only available from a specific Contract or in the opinion of the Divisional Director.

In each case the Divisional Director must ensure that the contractor meets the relevant national minimum standards (for example those standards set by the Health and Social Care Act 2008, OFSTED and HMI) and that a record of the reasons for the choice of the Contractor is maintained on the individual's case notes. A written record of the annual cumulative expenditure with each Contractor will be maintained by each division and made available for audit.

- 23.3 The Commissioning Officer may award a Minor or Small Contract without competition, following direct negotiation, to one or more VCSEs where, if the Council were not to Contract with the VCSE(s) it would significantly affect customers, or other greater gains or benefits would be lost.

24. Exemptions & Waivers

- 24.1 The Commissioning Officer may request an Exemption to the Contract Procedure Rules to directly negotiate the award of a Contract without competition by completing a Form for Exemptions & Waivers (FEW) for Contracts for:
- 24.1.1 Goods, Services or Works which are available only as proprietary or patented articles; Services or Works from one Contract or for which there is no reasonably satisfactory alternative available in the

European Union; and for repairs to, or the supply of, parts of existing proprietary or patented articles or Works, including machinery or plant;

- 24.1.2 works of art, museum specimens or historical documents (the completion and authorisation of a FEW is not required if the Contract is for the Arts & Museum Service);
- 24.1.3 particular artistes and performers and bought-in productions (the completion and authorisation of a FEW is not required if the Contract is for Arts & Museum Service);
- 24.1.4 those genuine unforeseen emergencies (not of the Council's own making), where immediate action is required, including in order to fulfil the Council's statutory obligations under the Civil Contingencies Act 2004;
- 24.1.5 Goods, Services or Works where one of the criteria for use of the Negotiated Procedure without Prior Publication set out in Regulation 32 of the Public Contracts Regulations 2015 is met;
- 24.1.6 certain Services set out in Regulation 10 of the Public Contracts Regulations 2015:
 - a) certain legal Services;
 - b) certain financial Services; public passenger transport Services by rail or metro;
 - c) certain civil defence, civil protection or danger protection Services.

24.2 When none of the circumstances listed in Rule 24.1 apply, the Commissioning Officer may, following consultation with the Head of Procurement, request a Waiver of the Contract Procedure Rules by completing a Form for Exemptions & Waivers (FEW).

24.3 The following table sets out the required authorisations for Exemptions and Waivers.

Contract Categorisation	Exemption	Waiver
Minor Contract	Head of Service	Head of Service
Small Contract	Divisional Director	Divisional Director & Head of Procurement
Intermediate Contract	Divisional Director & Head of Procurement	Divisional Director & Head of Procurement
Large Contract	Divisional Director & Head of Procurement	Divisional Director & Head of Procurement & City Barrister
EU Contract	Divisional Director & Head of Procurement & City Barrister	Divisional Director, Head of Procurement, City Barrister & Chief Operating Officer

24.4 Exemptions and Waivers may alternatively be authorised by the Executive supported by formal advice from the Head of Procurement and City Barrister.

25. In-House

- 25.1 Where an in-house service is able to provide the Goods, Services or Works required by another department/service of the Council, the Commissioning Officer should consult with the in-house service prior to commencing a procurement exercise.
- 25.2 Where the Commissioning Officer considers it more advantageous to the Council as a whole to procure the service externally rather than use the in-house service, the Contract Procedure Rules must be followed.
- 25.3 Where the Commissioning Officer decides to engage the in-house service, these Contract Procedure Rules do not apply.

TERMS AND CONDITIONS

26. Contract Duration

- 26.1 A Contract may not be of indeterminate duration or have a duration exceeding five years without the prior written approval of the Head of Procurement and appropriate Divisional Director.
- 26.2 A Framework Agreement may not be of indeterminate duration or have a duration exceeding four years without the prior written approval of the Head of Procurement and City Barrister.

27. Contract Terms

- 27.1 For Minor Contracts, the Commissioning Officer may place a Purchase Order including the Council's Standard Terms and Conditions.
- 27.2 For Small and Intermediate Contracts, the Procuring Officer may use:
 - 27.2.1 Appropriate Industry Standard Contract Templates, e.g. NASS, JCT or NEC; or
 - 27.2.2 The Council's Standard Contract Templates for the appropriate type of Contract;

provided no significant amendments are made to these templates. If these templates require significant amendment or bespoke terms and conditions are required, the Procuring Officer must engage Legal Services to provide appropriate terms and conditions. If the Council is to Contract on a Contractor's terms and conditions, these must be approved in writing by Legal Services prior to the Contract being signed.

- 27.3 For Large and EU Contracts, the Procuring Officer must engage Legal Services to provide and/or approve appropriate terms and conditions.

28. Execution of Contracts

- 28.1 For Small Contracts, the Procuring Officer must complete a Delegated Powers Certificate (DPC) for authorisation by the Head of Procurement and Budget Holder. Once the DPC is authorised, the Procuring Officer may award the Contract.
- 28.2 For Intermediate Contracts, the Procuring Officer must complete a DPC for authorisation by the Head of Procurement and appropriate Head of Service. Once the DPC is authorised, the Procuring Officer may award the Contract.
- 28.3 For Large and EU Contracts with no Standstill Period, following completion of the evaluation procedure, the Procuring Officer must complete a DPC for authorisation by the Head of Procurement and appropriate Divisional Director. Once the DPC is appropriately authorised, Legal Services may issue the Contract to the Contractor(s) for execution.

- 28.4 For Large and EU Contracts with a Standstill Period, following completion of the evaluation procedure, the Procuring Officer must complete a DPC for authorisation by the Head of Procurement and appropriate Divisional Director. Once the DPC is appropriately authorised, the Procuring Officer may issue the notices under Rule 56.1 to commence the Standstill Period. On completion of the Standstill Period, the DPC must be again authorised by the Head of Procurement, and, if a challenge is received, by the City Barrister. Once the DPC has again been appropriately authorised, Legal Services may issue the Contract to the Contractor(s) for signature.
- 28.5 For Contracts awarded pursuant to Rule 23.2, the City Barrister and appropriate Divisional Director may agree in writing alternative arrangements for the execution of Contracts.
- 28.6 Large and EU Contracts must be executed in accordance with Article 15.05 (Authority to sign contracts and other documents) of the Constitution.
- 28.7 Letters of Intent may only be issued ahead of the full Contract with the prior written approval of the City Barrister.

29. Mandatory Clauses

- 29.1 The proposed terms of Contract must include the provisions:
- 29.1.1 Permitting the termination of the Contract and the recovery of any sums paid where there has been evidence of bribery or corruption.
- 29.1.2 Entitling the Council to terminate part or all of the Contract or to obtain substituted provision of the Goods, Services and Works to be supplied under the Contract in the event of a breach of Contract by or the insolvency of the Contractor.
- 29.1.3 Stating the price (and/or any mechanism by which the price, any additional price or discounts are to be ascertained), and where appropriate, setting out the mechanisms for payment such as BACS, and requiring the inclusion of purchase orders numbers on invoices.
- 29.1.4 For Intermediate, Large and EU Contracts, prohibiting the Contractor or from sub-contracting, assigning or otherwise transferring the Contract without the prior written consent of the Council and providing that the Contractor shall remain liable to the Council for any part of the Contract that may be sub-contracted.
- 29.1.5 Requiring compliance by the contractor with any relevant legislative requirements, including where appropriate, in respect of:
- a) health and safety, including the setting up of appropriate systems and procedures for the Goods, Services and Works procured;
 - b) the prevention of inequality and the promotion of equality;
 - c) the observance of human rights in the performance of functional activity under the Contract (as if the Contractor were a public body);
 - d) Freedom of Information and Environmental Information Regulations, and requiring the Contractor to co-operate with the

Council in dealing with requests, the Contractor accepting that information will be liable to disclosure and allowing for requirements as to local transparency on Contracts and Tenders;

- e) data protection, confidentiality and information security;
 - f) clinical governance; and
 - g) workforce transfer legislation, where appropriate, including associated codes of practice.
- 29.1.6 Setting out indemnities for any claim in respect of employer's liability or public liability arising from the Contract, including if appropriate infringement of intellectual property rights, and appropriate insurance requirements of the Contractor;
- 29.1.7 Setting out indemnities in respect of claims made against the Council made in respect of a Contractor's activities and the provision of satisfactory insurance against such claims;
- 29.1.8 In cases where the Contractor's activities are of a type that can normally be so insured, requiring provision to the Council of evidence of satisfactory professional indemnity insurance held by the Contractor.
- 29.1.9 Where appropriate, requiring the provision to the Council of adequate Intellectual Property protection together with an indemnity protection;
- 29.1.10 Requiring the provision to the Council of adequate warranties (or direct covenants) from manufacturers of mechanical and engineering supplies, or for supplies of other products, where the Council's requirements have prescribed or prohibited materials or where a duty of skill and care is appropriate to the manufacture of the product in Contracts for the purchase of Goods;
- 29.1.11 If necessary, ensuring that appropriate vetting and barring is undertaken to ensure the safety of vulnerable groups, and appropriate safeguarding requirements, such as in relation to incident reporting, the Council's right to investigate and access to records/data;
- 29.1.12 For professional consultancy Contracts, requiring fair dealing in the case of conflict of interest;
- 29.1.13 Where appropriate for Large and EU Contracts, obliging the Contractor to maintain continuous improvement throughout the Contract period which may result in efficiencies to the Council's benefit;
- 29.1.14 Requiring the Contractor to Grant reasonable access to the Council to information relating to the Contract, and to undertake appropriate monitoring and compliance procedures;
- 29.1.15 Where appropriate, requiring relevant and proportionate social value considerations, such as prompt payment of sub-contractors.

USE OF PROCEDURES

30. Principles

- 30.1 A Contract of a lower categorisation may be procured via a procedure for a Contract of a higher categorisation, especially when the requirement is complex or the Contract could be considered high risk, so long as the procedure is proportionate to the requirement and complies with the Public Contracts Regulations 2015.
- 30.2 Where the Public Contracts Regulations 2015 permit (or do not fully apply), the procurement procedures set out in Rules 36 to 44 may be adapted to suit the nature of the procurement process in question. The process to be followed must be set out in the documents issued to Bidders and must at all times be fair and transparent.
- 30.3 Where a collaborative procurement process is being led, or has already been conducted, by another public sector body, the Contract Procedure Rules (or equivalent) of that public body shall apply to the process, so long as all relevant legislation is complied with.
- 30.4 The Commissioning Officer and Procuring Officer must ensure that any Quotation/Tender, if accepted, is reasonable in all the circumstances and represents value for money for the Council.

31. Minor Contracts

- 31.1 For Minor Contract, the Commissioning Officer should obtain at least one written quotation, preferably from a Local Bidders.
- 31.2 Whilst there is only a requirement for one quotation the Commissioning Officer must consider whether additional quotations are in the Council's best interests.
- 31.3 Where it is not practical or possible to obtain a written quotation, the Commissioning Officer must obtain at least one oral quotation and record this contemporaneously.

32. Small Contracts

- 32.1 Small Contracts must be procured by one of the Specialist Procurement Teams and/or using the Electronic Tendering System, unless agreed otherwise by the Head of Procurement.
- 32.2 Small Contracts must be procured in one of four ways:
 - 32.2.1 An Advertised Quotation process;
 - 32.2.2 A Quick Quotation process;
 - 32.2.3 A Targeted Quotation process; or
 - 32.2.4 Use of a Non-LCC Framework Agreement (with approval from the Head of Procurement).

33. Intermediate Contracts

- 33.1 Intermediate Contracts must be procured by one of the Specialist Procurement Teams, unless agreed otherwise by the Head of Procurement.
- 33.2 Intermediate Contracts must be procured in one of four ways:
 - 33.2.1 An Advertised Quotation process;
 - 33.2.2 A Competition for Funding process;
 - 33.2.3 Use of a Non-LCC Framework Agreement; or
 - 33.2.4 A Targeted Quotation process (with the approval of the Head of Procurement).

34. Large Contracts

- 34.1 Large Contracts must be procured by one of the Specialist Procurement Teams, unless agreed otherwise by the Head of Procurement.
- 34.2 Large Contracts must be procured in one of four ways:
 - 34.2.1 An Open Tender process;
 - 34.2.2 A Restricted Tender process, but only where permitted by Regulation 107 of the Public Contracts Regulations 2015;
 - 34.2.3 A Competition for Funding process; or
 - 34.2.4 Use of a Non-LCC Framework Agreement.

35. EU Contracts

- 35.1 EU Contracts must be procured by one of the Specialist Procurement Teams, unless agreed otherwise by the Head of Procurement.
- 35.2 EU Contracts must be procured in one of the following ways:
 - 35.2.1 An Open Tender procedure;
 - 35.2.2 A Restricted Tender procedure;
 - 35.2.3 Use of a Non-LCC Framework Agreement;
 - 35.2.4 A Competition for Funding process (only for Services listed in Schedule 3 to the Public Contracts Regulations 2015);
 - 35.2.5 An Innovation Partnership or Design Contest procedure;
 - 35.2.6 A Competitive Procedure with Negotiation; or
 - 35.2.7 A Competitive Dialogue procedure.
- 35.3 The Innovation Partnership or Design Contest procedures, Competitive Procedure with Negotiation, and Competitive Dialogue procedure may only be used with the approval of the Head of Procurement and City Barrister.

PROCUREMENT PROCEDURES

36. Advertised Quotation

- 36.1 The Procuring Officer must advertise the requirement for an appropriate period of time to allow interested parties to respond.
- 36.2 A Request for Quotation (RfQ) document must be made available to all interested parties who respond to the Advertisement. The RfQ must contain or identify:
 - 36.2.1 Instructions for the completion and return of Quotations;
 - 36.2.2 A Specification setting out the Council's requirements;
 - 36.2.3 The proposed terms and conditions of Contract;and for Intermediate Contracts:
 - 36.2.4 The procedure for the evaluation of Quotations.
- 36.3 Quotations received in accordance with the instructions contained in the RfQ (or as otherwise permitted by these Rules) will be evaluated by the Evaluation Panel in line with the procedure set out in the RfQ to make a decision on which Bidder(s), if any, will be awarded the Contract.

37. Quick Quotation

- 37.1 The Procuring Officer must use the Electronic Tendering System to notify a random selection of appropriate organisations which have pre-registered on the Electronic Tendering System and invite them to quote.
- 37.2 A minimum of five organisations must be invited to quote. If there are insufficient appropriate organisations pre-registered on the Electronic Tendering System, a Quick Quotation Procedure may not be used.
- 37.3 A Request for Quotation (RfQ) document must be made available to the selected organisations who respond to the Advertisement. The RfQ must contain or identify:
 - 37.3.1 Instructions for the completion and return of Quotations;
 - 37.3.2 A Specification setting out the Council's requirements;
 - 37.3.3 The proposed terms and conditions of Contract; and
 - 37.3.4 The procedure for the evaluation of Quotations.
- 37.4 Quotations received in accordance with the instructions contained in the RfQ (or as otherwise permitted by these Rules) will be evaluated by the Evaluation Panel in line with the procedure set out in the RfQ to make a decision on which Bidder (s), if any, will be awarded the Contract.

38. Targeted Quotation

- 38.1 The Procuring Officer must obtain four written Quotations of which at least two shall be from Local Bidders. Where this is not reasonably practical, the

Procuring Officer must make a file note to evidence reasonable effort to obtain the required Quotations.

- 38.2 The Procuring Officer must log all details of the Quotations or other responses for future reference.
- 38.3 The Evaluation Panel may make the decision on whether or not to award the Contract after considering all offers and shall keep a written record of their decision including reasons for the decision.

39. Competition for Funding

- 39.1 The Competition for Funding process is to be used for where the Council has an amount of funding to support the achievement of certain outcomes or delivery of services.
- 39.2 The Procuring Officer must advertise the Competition for Funding for an appropriate period of time to allow interested parties to respond.
- 39.3 A Competition for Funding (CFF) document must be made available to all interested parties who respond to the Advertisement. The CFF must contain or identify:
 - 39.3.1 Instructions for the completion and return of Submissions;
 - 39.3.2 A Specification setting out the Council requirements;
 - 39.3.3 The proposed terms and conditions of Contract;
 - 39.3.4 The procedure for the selecting successful Bidders, and allocating the available funding between them.
- 39.4 Submissions received in accordance with the instructions contained in the CFF (or as otherwise permitted by these Rules) will be evaluated by the Evaluation Panel in line with the procedure set out in the CFF to make a decision on which Bidder (s), if any, will be awarded the funding.

40. Open Tender

- 40.1 The Procuring Officer must advertise the requirement on the Source Leicestershire website (or other appropriate website) for an appropriate period of time to allow interested parties to respond.
- 40.2 An Invitation to Tender (ITT) document must be made available to all interested parties who respond to the Advertisement. The ITT must contain or identify:
 - 40.2.1 Instructions for the completion and return of Tenders;
 - 40.2.2 A Specification setting out the Council's requirements;
 - 40.2.3 The proposed terms and conditions of Contract; and
 - 40.2.4 The procedure for the evaluation of Tenders.
- 40.3 Tenders received in accordance with the instructions contained in the ITT (or as otherwise permitted by these Rules) will be evaluated by the Evaluation Panel

in line with the procedure set out in the ITT to make a decision on which organisation(s), if any, will be awarded the Contract.

- 40.4 When using an Open Tender process for an EU Contract, the Procuring Officer must comply with any applicable requirements set out in the Public Contracts Regulations 2015.

41. Restricted Tender

- 41.1 The Procuring Officer must advertise the requirement on the Source Leicestershire website (or other appropriate website) for an appropriate period of time to allow interested parties to respond.
- 41.2 A Pre-Qualification Questionnaire (PQQ) document must be made available to all interested parties who respond to the Advertisement. The PQQ must contain or identify:
- 41.2.1 Instructions for the completion and return of PQQs;
 - 41.2.2 A brief overview of the Council's requirements; and
 - 41.2.3 The procedure for the evaluation of PQQs.
- 41.3 PQQs received in accordance with the instructions contained in the PQQ (or as otherwise permitted by these Rules) will be evaluated by the Evaluation Panel in line with the procedure set out in the PQQ to make a decision on which Bidders, if any, are to be invited to tender. For EU Contracts, a minimum of five Bidders must be selected to tender (unless fewer suitable candidates have met selection criteria and these are sufficient to ensure genuine competition).
- 41.4 An Invitation to Tender (ITT) document must be made available to all Bidders selected to be invited to Tender following the procedure set out above. The ITT must contain or identify:
- 41.4.1 Instructions for the completion and return of Tenders;
 - 41.4.2 A Specification setting out the Council's requirements;
 - 41.4.3 The proposed Terms and Conditions of Contract; and
 - 41.4.4 The procedure for the evaluation of Tenders.
- 41.5 Tenders received in accordance with the instructions contained in the ITT (or as otherwise permitted by these Rules) will be evaluated by the Evaluation Panel in line with the procedure set out in the ITT to make a decision on which Bidder (s), if any, will be awarded the Contract.
- 41.6 When using a Restricted Tender process for an EU Contract, the Procuring Officer must comply with any applicable requirements set out in the Public Contracts Regulations 2015.

42. Innovation Partnership and Design Contest

- 42.1 An Innovation Partnership or Design Contest process may only be used with the approval of the Head of Procurement.

42.2 When using an Innovation Partnership or Design Contest process for an EU Contract, the Procuring Officer must comply with any applicable requirements set out in the Public Contracts Regulations 2015.

43. Competitive Procedure with Negotiation

43.1 A Competitive Procedure with Negotiation may only be used in the circumstances set out in the Public Contracts Regulations 2015 and with the approval of the Head of Procurement and City Barrister.

43.2 When using a Competitive Procedure with Negotiation process for an EU Contract, the Procuring Officer must comply with any applicable requirements set out in the Public Contracts Regulations 2015.

44. Competitive Dialogue

44.1 A Competitive Dialogue process may only be used with the approval of the Head of Procurement and City Barrister.

44.2 When using a Competitive Dialogue process for an EU Contract, the Procuring Officer must comply with any applicable requirements set out in the Public Contracts Regulations 2015.

USE OF FRAMEWORK AGREEMENTS & DYNAMIC PURCHASING SYSTEMS

45. Value Categorisation of Framework Agreements & DPSs

- 45.1 Categorisation of Framework Agreements and DPSs will follow that set out in Rule 15.6 for Contracts. The Estimated Value should consider the total expected value of all Call-Off Contracts over the maximum duration of the Framework Agreement by all organisations who may use the Framework Agreement or DPS.

46. LCC Framework Agreements

- 46.1 Where the Council is the contracting authority, the Framework Agreement must be established by following these Contract Procedure Rules as if it were a Contract.
- 46.2 The Framework Agreement must set out a methodology for how contracts under the Framework Agreement will be called off. Completion of this process will replace the procedures required by these Rules for Call-Off Contracts.
- 46.3 Additional Contractors may only be added to a Framework Agreement during the term of the Framework Agreement in circumstances where:
- 46.3.1 it is not an EU Contract or the Framework Agreement is for Services listed in Schedule 3 to the Public Contracts Regulations 2015; and
 - 46.3.2 the Invitation to Tender states:
 - a) that additional organisations may be added to the Framework Agreement during the term of the Framework Agreement;
 - b) how and when additional organisations can apply to be added to the Framework Agreement; and
 - c) that the same evaluation criteria and award methodology are applied when deciding whether to award the Framework Agreement to additional organisations as was applied at the time of the original award.

47. Non-LCC Framework Agreements

- 47.1 The Council may use Framework Agreements set up by other public authorities or Central Purchasing Bodies where the Framework Agreement entitles the Council to do so, subject to the approval of the Head of Procurement. Such approval is not required for Minor Contracts.
- 47.2 Where the Council's Call-Off Contract is itself a Large Contract or an EU Contract, the City Barrister must authorise the use of the Framework Agreement.
- 47.3 The Procuring Officer must follow the methodology and all requirements set out in the Framework Agreement when awarding a Call-Off Contract under the Framework Agreement.

48. Dynamic Purchasing Systems (DPSs)

- 48.1 A Dynamic Purchasing System may only be established with the approval of the Head of Procurement.
- 48.2 A Dynamic Purchasing System must be established and used in accordance with the Public Contracts Regulations 2015.

CONDUCTING A PROCUREMENT PROCESS

49. Fairness & Equal Treatment

- 49.1 The Procuring Officer must give all Bidders the same information about the proposed Contract and procurement process and in particular information relating to the Tender/Quotation process, Specification, award methodology and evaluation criteria.
- 49.2 The Procuring Officer must ensure that all processes set out in the procurement documentation issued to Bidders are followed.
- 49.3 Between the Advertisement and deadline for receipt of Submissions or where no Advertisement is placed (e.g. in the second stage of a Restricted Tender procedure or in a Targeted Quotation procedure), the issue of documents to Bidders, the Procuring Officer may respond to questions of clarification received from Bidders, but must ensure that Rule 49.1 is complied with, to the extent that any response given to one Bidder may be relevant to other Bidders.

50. Advertisement

- 50.1 Wherever stated in the Procurement Procedures section above, procurement procedures must be advertised on the Source Leicestershire website. This website may be substituted with another appropriate advertising medium at the discretion of the Head of Procurement.
- 50.2 Advertising on Source Leicestershire is a minimum requirement and does not preclude further Advertisement as deemed appropriate by the Procuring Officer (e.g. in the local newspaper, trade or professional journal, the Council website).
- 50.3 For all procurement procedures that are advertised, the Procuring Officer must allow a reasonable time between the date of the Advertisement (or where no Advertisement is placed (e.g. in the second stage of a Restricted Tender procedure or in a Targeted Quotation procedure), the issue of documents to Bidders) and the deadline for receipt of Submissions, having regard to:
 - 50.3.1 the requirements of the Public Contracts Regulations 2015;
 - 50.3.2 the amount of effort likely to be required to make a Submission; and
 - 50.3.3 the urgency of the requirement.
- 50.4 The Advertisement must express the nature and purpose of the procurement procedure, stating where further details may be obtained.
- 50.5 For Contracts where the Public Contracts Regulations 2015 require an Advertisement to be placed in the OJEU and/or on Contracts Finder, the Procuring Officer must ensure that such Advertisements are placed compliantly.
- 50.6 For EU Contracts where an OJEU Contract Notice is required, the Procuring Officer must ensure that the Advertisement is first despatched to the OJEU before it is published on Source Leicestershire or in any other media.

- 50.7 No Advertisement should contain any more information than that published in the OJEU (if an OJEU Contract Notice is required).
- 50.8 For EU Contracts, the Procuring Officer may use a Prior Information Notice (PIN) followed by an Invitation to Confirm Interest in place of an OJEU Contract Notice, as permitted by the Public Contracts Regulations 2015.

51. Specification

- 51.1 The Specification must be a clear written statement of the Goods, Services or Works required, in sufficient detail to:
- 51.1.1 enable the Bidder to submit a competitive price, demonstrating quality and added value;
 - 51.1.2 ensure that Goods, Services or Works supplied will meet the requirement of the Council; and
 - 51.1.3 define the precise output and/or outcomes required.
- 51.2 Unless justified by the subject matter of the Contract, the Specification shall not refer to a specific make or source, or a particular process which characterises the Goods, Services or Works provided by a specific organisation, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain organisations or certain products. Such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the Contract is not possible and this is agreed by the Commissioning Officer and the Procuring Officer. Such reference shall be accompanied by the words 'or equivalent'.

52. Opening of Submissions

- 52.1 The PQQ, RfQ, CFF or ITT must specify the latest day and hour for the receipt of Submissions.
- 52.2 Wherever possible, the Procuring Officer should use the Electronic Tendering System for the receipt of Submissions.
- 52.3 For Large and EU Contracts, where the Electronic Tendering System is not used:
- 52.3.1 Tenders must be returned to an officer designated by the Head of Procurement. The Designated Officer must have no other involvement in the procurement process.
 - 52.3.2 Tenders must be received in a plain sealed envelope or parcel addressed to the Designated Officer. The envelope or package must bear the word "Tender" followed by the subject to which it relates.
 - 52.3.3 On receipt, envelopes containing Tenders must be date and time stamped by the Designated Officer and shall remain in the Designated Officer's secure custody until they are opened, which shall not be before the stated closing date/time.

- 52.3.4 The Designated Officer must open the Tenders at one time in the presence of at least one other officer. Each officer must initial each Tender once opened which must also be date stamped.
 - 52.3.5 Particulars of all Tenders opened must be entered by the Designated Officer upon a written record which must be signed by the officers present at the opening, together with a written note of any Tenders rejected at the point of opening and the reasons for their rejection.
 - 52.3.6 The Designated Officer must retain a copy of the record and forthwith send a copy to the Procuring Officer with the Tenders.
- 52.4 For Quotations, completed CFFs and Tenders not covered by Rule 52.3 above, where the Electronic Tendering System is not used:
- 52.4.1 Submissions must be returned to an officer designated by the Head of Procurement. The Designated Officer must have no other involvement in the procurement process.
 - 52.4.2 On receipt, envelopes containing Tenders must be date and time stamped by the Designated Officer and shall remain in the Designated Officer's secure custody until they are opened, which shall not be before the stated closing date/time.
- 52.5 Where Submissions are received by e-mail, the requirement in Rules 52.3 and 52.4 for date and time stamping, and initialling is removed, and the requirements for labelling envelopes should be applied to the subject of the e-mail instead.
- 52.6 Where the Electronic Tendering System is not used, completed PQQs may be returned directly to the Procuring Officer.
- 52.7 The Head of Procurement may authorise the acceptance of Submissions received via the Electronic Tendering System after the stated date and time where:
- 52.7.1 there is clear evidence of technical issues preventing the Bidder sending their Submission ahead of the deadline, as acknowledged by the provider of the Electronic Tendering System; and
 - 52.7.2 the Bidder gains no other advantage through the acceptance of their Submission.
- 52.8 Where the Electronic Tendering System has not been used a Submission received after the closing date and time may be opened and evaluated if there is clear evidence of it having:
- 52.8.1 been posted by first class post at least a day before the closing date; or
 - 52.8.2 been posted by second class post at least three days before the closing date; or
 - 52.8.3 been placed in the custody of a courier who has provided reasonable written assurance of delivery prior to the closing date and time.

52.9 Submissions not received in compliance with the Rules set out for Bidders will be rejected, except where the City Barrister considers that there are exceptional circumstances and that the Bidder who made the Submission has gained no advantage from its non-compliance, he may determine to accept the Submission and authorise that it be opened and evaluated together with any other Submissions. The City Barrister shall record in writing the reasons, which must be consistent with the application of public procurement law, for which the Submissions has been accepted. Any such reason shall not be deemed to set any precedent.

53. Reserved Contracts

53.1 The Procuring Officer may reserve a Contract for sheltered workshops, mutuals or social enterprises (or similar) as long as this is clearly set out in all appropriate documentation, including the Advertisement. Where an EU Contract is reserved for sheltered workshops, mutuals or social enterprises, the approval of the Head of Procurement and City Barrister must be sought and the criteria and processes set out in Regulation 20 or Regulation 77 of the Public Contracts Regulations 2015 must be followed.

54. Clarification of Submissions

54.1 Bidders are not permitted to alter their Submissions after opening save in accordance with the instructions provided to Bidders, this Rule or Rule 55 below.

54.2 Following the closing date for receipt of Submissions but before acceptance/shortlisting of any Submission, the Procuring Officer may correspond or discuss with Bidders in order to seek clarification of its Submission.

54.3 A written note of the discussions must be made to record the date, time, and detail of the discussion. Where the Electronic Tendering System is being used, clarification should be conducted via or recorded on the Electronic Tendering System.

54.4 Any clarification of Submissions during a procurement process must always ensure fair and equal treatment of all Bidders is maintained. Clarification of Submissions is at the Council's discretion.

55. Negotiation

55.1 Subject to the prior written approval of the Head of Procurement, for all Contracts except EU Contracts, following the closing date for receipt of Submissions, but before acceptance of any Submissions, the Procuring Officer in consultation with the Commissioning Officer may negotiate with the Bidder (s) in an attempt to secure improvements in the price or economic advantage.

55.2 When conducting negotiations, the following rules shall apply:

- 55.2.1 At no time during the negotiations must a Bidder be informed of the detail of any other Submission or as to whether or not the Tender he submitted was the lowest.
 - 55.2.2 During negotiations in person there must always be present at least two officers of the Council.
 - 55.2.3 A written note of the negotiations must be made and retained by one of the officers' present recording those present, the time and location of the negotiations, detail of the discussion and any agreement reached.
 - 55.2.4 Post-tender negotiations shall not enable any material departure from the published Specification and/or Contract terms. The City Barrister, in consultation with the Head of Procurement and appropriate Divisional Director, shall determine whether any proposed change to the Specification constitutes a material departure and whether as a consequence other Bidders shall be permitted to participate in negotiations and/or whether new Tenders should be invited, to avoid any potential allegations of competition being distorted.
- 55.3 Post-tender negotiations are not allowed for EU Contracts; however, clarifications of errors or discrepancies in Tenders may take place in accordance with Rule 54.

56. Standstill Period

- 56.1 For Tenders for EU Contracts, the Procuring Officer must notify all Bidders who are required to be notified under Regulation 86 of the Public Contracts Regulations 2015 of the decision regarding the acceptance or rejection of their Tender, including:
- 56.1.1 the successful Bidder's score;
 - 56.1.2 the score (if any) of the Bidder receiving the notice;
 - 56.1.3 the characteristics and (if appropriate) relative advantages of the successful Bidder's Tender;
 - 56.1.4 any reasons why the Bidder receiving the notice did not meet the Specification;
 - 56.1.5 the name of the Bidder to be awarded the Contract, and
 - 56.1.6 the date when the Standstill Period required in accordance with Rule 56.2 will come to an end.

A Standstill Period may be applied to Large Contracts and Call-Off Contracts from Framework Agreements that themselves constitute EU Contracts.

- 56.2 For EU Contracts, the Standstill Period must last a minimum of 10 calendar days from the day of sending the notice in Rule 57 to the date on which the Council enters into the Contract, if the notice is sent electronically. Where the notice is sent by other means, then the Standstill Period must last a minimum of either 15 days from the day of sending the notice or 10 days from the day of receipt of the notice by the last Bidder to receive the notice. In all cases

counting the day after sending the notice as day one. The Standstill Period must end on a Working Day.

- 56.3 If, during the Standstill Period, a formal challenge is received from a Bidder, the authorisation of the Head of Procurement and City Barrister to award the Contract must be sought.

57. Contract Award

- 57.1 Following the appropriate authorisation of a DPC (see Rule 28), and including, where applied, the completion of the Standstill Period, the Procuring Officer must notify the successful Bidder(s) of the acceptance of their Submission.
- 57.2 For Intermediate, Large and EU Contracts the Procuring Officer must also notify in writing all unsuccessful Bidders at the same time as the successful Bidder(s).
- 57.3 For Contracts for which the Public Contracts Regulations 2015 stipulate that an OJEU and/or Contracts Finder Contract Award Notice is required, the Procuring Officer shall ensure that such Award Notice(s) is/are placed within the timescales required by the Public Contracts Regulations 2015.
- 57.4 The Procuring Officer must ensure that all Intermediate, Large and EU Contracts are entered onto the Contracts Database.

CONTRACT MANAGEMENT & CONTRACT AMENDMENTS

58. Contract Management

- 58.1 The appropriate Divisional Director must ensure that for each Intermediate, Large or EU Contract, a person is designated as the Contract Manager. The Contract Manager may be a Council officer or a Contractor/consultant. The Commissioning Officer may be, but need not be, the Contract Manager.
- 58.2 The Contract Manager is responsible for managing the performance of the Contract and the Contractor (s) throughout the Contract period, including ensuring that Best Value is obtained and that the Council and Contractor both fulfil their respective obligations under the Contract.

59. Financial Parameters for Contract Amendments

- 59.1 When considering Contract Extensions and Variations as set out in Rules 60 and 61 below the categorisation of a Contract should follow the table at Rule 15.6 but the value should include the value for the original period of the contract and any proposed extension or variation (including any further options for additional extensions/variations) whether provided for in the original Contract or not.

60. Contract Extensions

- 60.1 Where a Minor, Small or Intermediate Contract provides for the proposed extension, the appropriate Head of Service shall be authorised to extend the period of the Contract. The Head of Service must inform the Head of Procurement of the extension.
- 60.2 Where a Large or EU Contract provides for the proposed extension, the appropriate Divisional Director shall be authorised to extend the period of the Contract in consultation with the Head of Procurement.
- 60.3 Where a Minor or Small Contract does not provide for the proposed extension, the appropriate Divisional Director shall be authorised to extend the period of the Contract. The Divisional Director must inform the Head of Procurement of the extension.
- 60.4 Where an Intermediate Contract does not provide for the proposed extension, the appropriate Divisional Director shall be authorised to extend the period of the Contract in consultation with the Head of Procurement and City Barrister so long as this does not give cause to an increase in value of more than 100% of the original Contract Value. If the proposed extension will give cause to an increase to the original Contract Value of more than 100% the Divisional Director must seek the authorisation of the Head of Procurement and City Barrister.
- 60.5 Where a Large Contracts does not provide for the proposed extension, the appropriate Divisional Director shall seek authorisation to extend the period of the Contract from the Head of Procurement and City Barrister.

60.6 Where an EU Contract does not provide for the proposed extension, the appropriate Divisional Director shall seek authorisation to extend the period of the Contract from the Head of Procurement and City Barrister.

61. Contract Variations

61.1 No variation may be authorised under this Rule that alters the overall nature of the Contract. When authorising all variations, the officer(s) must have due regard to transparency and openness of procurement and to value for money of the proposed variation.

61.2 The Contract Manager may make changes to the Contract or delivery of the Contract where these have been explicitly foreseen within the terms of the Contract or where changes are of a minor nature and will not significantly affect the overall delivery or cost of the Contract. The Contract Manager must retain both parties' written agreement to the change which must include details of the change.

61.3 The appropriate Head of Service shall be authorised to vary a Minor, Small or Intermediate Contract. This authorisation must be issued before the work is carried out, or in the case of an emergency, immediately thereafter. The Head of Service must inform the Head of Procurement of the variation.

61.4 The appropriate Divisional Director shall be authorised to vary a Large Contracts, so long as this does not give cause to an increase in value of more than 50% of the original Contract Value, whether caused by this one variation or the aggregation of this variation with ones that have previously been authorised. In such cases the Divisional Director must inform the Head of Procurement of the variation. If the proposed variation will give cause to an increase to the original Contract Value of more than 50% the Divisional Director must seek the authorisation of the Head of Procurement. This authorisation must be issued before the Goods/Services/Works that are the subject of the Variation are provided/carried out, or in the case of an emergency, immediately thereafter.

61.5 The appropriate Divisional Director shall be authorised to vary an EU Contract, so long as this does not give cause to an increase in value of 10% or more (15% for Works Contracts) of the original Contract Value, whether caused by this one variation or the aggregation of this variation with ones that have previously been authorised. In such cases the Divisional Director must inform the Head of Procurement of the variation. If the proposed variation will give cause to an increase to the original Contract Value of 10% or more (15% for Works Contracts) the Divisional Director must seek the authorisation of the Head of Procurement and City Barrister ensuring the Council remains within the provisions of the Public Contracts Regulations 2015. This authorisation must be issued before the Goods/Services/Works that are the subject of the Variation are provided/carried out, or in the case of an emergency, immediately thereafter.

62. Novation of Existing Contracts

- 62.1 The novation of a Contract from/to the Council or to a new Person (in place of the Council or in place of another party to the Contract) requires the prior written approval of the City Barrister. The novation of a Contract must be agreed in writing between the parties. The Head of Procurement must be informed of the novation.

63. Early Termination of Contracts

- 63.1 Following consultation with the City Barrister and Head of Procurement the Divisional Director shall be authorised to terminate any Contract before the expiry of its agreed term or the provision of the Goods, Works or Services is complete.

64. Execution of Contract Amendments

- 64.1 For Small and Intermediate Contracts, the Contract Manager must complete a DPC detailing the Contract Amendment for the appropriate authorisations. Once the DPC is appropriately authorised, the Contract Manager may confirm the Contract Amendment in writing to the Contractor (s), so long as the Contract Manager is authorised to do so under Article 15 of the Constitution. If the Contract Manager is not authorised to do so, another officer, so duly authorised may do so.
- 64.2 For Large Contracts and EU Contracts the Contract Manager must complete a DPC for the appropriate authorisations detailing the Contract Amendment. Once the DPC is appropriately authorised, Legal Services may issue the Contract Documents to the Contractor (s) for signature.

APPENDIX 1: DEFINITIONS

Terms defined in the Public Contracts Regulations 2015 have the same meaning when used in these Rules.

Terms defined in the Council's Constitution have the same meaning when used in these Rules. Where a job title is used and that job title is no longer appropriate, the Chief Operating Officer will identify the postholder to replace the stated job title. To ensure effective operation of these rules, the Head of Procurement and City Barrister may delegate their responsibilities under these Rules to appropriately skilled officers.

Other terms are defined by these Rules.

In all of the above cases, hyperlinks are provided to the appropriate definition wherever the term is used.

Where necessary, additional definitions are provided below:

“Best Value” A statutory framework that ensures that Councils are required to plan, deliver and continuously improve local authority services. Each local authority has a duty 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.

“Bidder” means a person or organisation who responds to an Advertisement or invitation and participates in a procurement procedure to win a Contract.

“Call-Off Contract” – a Contract based on a “Framework Agreement” or DPS.

“Commissioning Officer” means a person appointed by a Head of Service or Chief Officer to identify and specify the requirement, and provide specialist service/technical input into the Procurement Procedure.

“Contract” means an agreement between the Council and a Contractor comprising the conditions of Contract, Specification and any defined schedules or other matters referred to in the ITT/RfQ and/or the Contractor's Submission.

“Contract Manager” means a person appointed by a Head of Service or Chief Officer to manage the performance of a Contract throughout its Contract period. The duties of a Contract Manager shall begin when the Contract is awarded and shall cease when it is completed or terminated.

“Council” means Leicester City Council.

“Contractor” means any person or organisation contracted to sell, provide or buy Goods, Service or Works. This term applies after a Contract is formed.

“Electronic Tendering System” means any IT system approved for use by the Head of Procurement via which a procurement process can be conducted.

“EU Threshold” means the relevant threshold set out in Regulation 5(1)(a), (c) or (d) of the Public Contracts Regulations 2015

“Evaluation Panel” means the Procuring Officer, the Commissioning Officer and any other individuals designated by them to participate in evaluating Submissions. All such individuals must have the relevant skills and experience to make value judgements on the Submissions received. For Large and EU Contracts, the Evaluation Panel must include at least one other officer to evaluate the technical quality elements of the Submission in addition to the Commissioning Officer.

“Goods” means the subject of a Public Supply Contract.

“Grant” means a sum of money awarded following the receipt of a successful application against published criteria. The issue of funds will be reliant on the entering into of an agreement and the submission to published compliance and monitoring criteria.

“Local” means a business having a base from which the Goods/Services/Works will be delivered with a LE postcode.

“OJEU” means the Official Journal.

“Procuring Officer” means a person appointed by the Head of Procurement for the purpose of carrying out the appropriate duties set out in these Contract Procedure Rules. A Procuring Officer may be appointed specifically for the purpose of a single Contract or for a range of Contracts.

“Quotation” means a completed RfQ (or similar Submission from a Bidder), and any attached documents submitted by a Bidder as part of a procurement procedure.

“Services” means the subject of a Public Service Contract.

“Specialist Procurement Teams” Procurement Services (Finance Division), ICT Contract & Procurement Team (Information and Access Division) and Social Care & Public Health Procurement Team (Care Services and Commissioning Division).

“Specification” means a clear written statement of the Goods, Services or Works, in sufficient detail to:

- a) enable the Bidder to submit a competitive price, demonstrating quality and added value.
- b) ensure that Goods, Services or Works supplied will meet the requirement of the Council.
- c) define the precise output and/or outcomes required.

“Submission” means a completed, CFF, ITT, RfQ, PQQ or other similar document submitted by a Bidder as part of a procurement procedure.

“Tender” means a completed ITT, and any attached documents submitted by a Bidder as part of a procurement procedure.

“Works” means the subject of a Public Works Contract.

APPENDIX 2: INTERPRETATION OF THE CONTRACT PROCEDURE RULES FOR MAINTAINED SCHOOLS

Part 1: Interpretation of the Rules for Schools

1. Scope & Definitions

- 1.1 The Contract Procedure Rules apply to Maintained Schools, but not to Academies (including Free Schools).
- 1.2 The Contract Procedure Rules, as amended by this Appendix, shall form part of the Scheme for Financing Schools.
- 1.3 All references to officers and staff of the Council shall be interpreted to cover all employees in schools (including Teachers and Head Teachers) and Governors.
- 1.4 The following terms will be substituted when interpreting these Rules for Schools:
 - 1.4.1 'City Barrister' shall be replaced by 'Chair of Governors' except in Rules 20 and 21;
 - 1.4.2 'Council' shall be replaced by 'School' except the first reference in Rule 1.1;
 - 1.4.3 'Divisional Director' shall be replaced by 'Chair of Governors';
 - 1.4.4 'Head of Procurement' shall be replaced by 'Chair of Governors' except in Rules 20 and 21;
 - 1.4.5 'Head of Finance' shall be replaced by 'Head Teacher';
 - 1.4.6 'Head of Service' shall be replaced by 'Head Teacher';
 - 1.4.7 'member' shall be replaced by 'Governor';
 - 1.4.8 'officer' shall be replaced by 'School Employee';

It is recognised that this may lead to (for example) the Head Teacher consulting with him/herself (etc.) but these references are maintained for consistency with the Council's Rules, and may be applicable should the Head Teacher choose to delegate some of his responsibility, (e.g. those of the Divisional Director in the Council's Rules).

- 1.5 It is acknowledged that Schools may not have specialist procurement staff, and therefore it is the Chair of Governors' responsibility to ensure that the School Employees who carry out these duties have access, where necessary, to appropriate support, guidance and professional advice to follow these Rules and act lawfully. The Council may provide its own internal guidance for the use of Schools and provide initial advice and support.

Part 2: Amended Rules for Schools

The following Rules are amended for Schools as set out below. All other Rules remain unchanged, except for the application of the interpretation set out in Part 1 above.

6. Transparency

6.1 This Rule does not apply to Schools.

10. Contracts Database & Electronic Tendering System

10.1 This Rule does not apply to Schools.

10.3 Schools may use an Electronic Tendering System, e-mail or traditional paper-based processes when carrying out procedures under these Rules.

14. Private Interests

14.2 to 14.3 Replace this Rule with “School Employees and Governors shall comply with the School’s codes of conduct and the requirements of the Scheme for Financing Schools, which includes the requirement for the Governing Body to maintain a register of business interests.”

15. Financial Parameters

15.2.7 Replace this Rule with “Each School may be considered to be a discrete operational unit when considering the aggregate value of a requirement, except when more than one school choose to procure jointly, at which stage the aggregate of all the schools procuring together must be considered.”

16. Procurement Plan

16.1-16.5 This Rule does not apply to Schools.

17. Procurement Pipeline

17.1 This Rule does not apply to Schools.

18. Procurement Strategy

18.1 This Rule does not apply to Schools.

19. Monitoring & Reporting

19.1 This Rule does not apply to Schools.

22. Financial Approval

22.1 Replace this Rule with “Before procurement of any Contract reaches the Advertisement stage, it must have financial approval from the appropriate officer, as set out in the table below:

Contract Categorisation	Financial Approval
Minor Contract	Budget Holder(s)
Small Contract	Head Teacher
Intermediate Contract	Chair of Governors
Large Contract	Chair of Governors
EU Contract	Chair of Governors

24. Exemptions & Waivers

24.1 The Commissioning Officer may request an Exemption to the Contract Procedure Rules to directly negotiate the award of a Contract without competition:

24.1.3 particular artistes and performers and bought-in productions;
[other sub-paragraphs remain unchanged]

24.2 When none of the circumstances listed in Rule 24 applies, the Commissioning Officer may, request a Waiver of the Contract Procedure Rules.

24.3 The following table sets out who may authorise Exemptions and Waivers.

Contract Categorisation	Exemption	Waiver
Minor Contract	Head Teacher	Head Teacher
Small Contract	Head Teacher	Chair of Governors
Intermediate Contract	Chair of Governors	Chair of Governors
Large Contract	Chair of Governors	Chair of Governors
EU Contract	Chair of Governors	City Barrister

24.4 This Rule does not apply to Schools.

27. Contract Terms

27.2 Replace this Rule with “For all Contracts, the Procuring Officer may use, as appropriate:

27.2.1 Appropriate Industry Standard Contract Templates, e.g. NASS, JCT or NEC; or

27.2.2 The Council’s Standard Contract Templates for the appropriate type of Contract; or

27.2.3 Contract Terms developed for the Contract and approved by the Head Teacher.”

27.3 This Rule does not apply to Schools.

28. Execution of Contracts

28.1 to 28.4 This Rule does not apply to Schools. Replace with “Employees so authorised by the Head Teacher may sign Contracts on behalf of the School on completion of an appropriate procurement procedure as set out in these Rules.”

28.5 Replace this Rule with “Contracts with a value of over £60,000 per annum and a total value over £1,000,000 must be approved by the Head of Finance (Children’s Services) prior to being signed on behalf of the School.”

32. Small Contracts

32.1 This Rule does not apply to Schools.

33. Intermediate Contracts

33.1 This Rule does not apply to Schools.

34. Large Contracts

34.1 This Rule does not apply to Schools.

35. EU Contracts

35.2 This Rule does not apply to Schools.

52. Opening of Submissions

52.2 This Rule does not apply to Schools.

57. Contract Award

57.1 Replace this Rule with “After the completion of the Standstill Period, or, if no Standstill Period is applied, the Procuring Officer must notify the successful Bidder(s) of the acceptance of their Submission.”

57.4 This Rule does not apply to Schools.

64. Execution of Contract Amendments

64.1 Replace this Rule with “Once the Contract Amendment is appropriately authorised, the Contract Manager may confirm the Contract Amendment in writing to the Contractor(s), so long as the Contract Manager is so authorised to do so. If the Contract Manager is not authorised to do so, another officer, so duly authorised may do so.”

64.2 This Rule does not apply to Schools.

Proposed Changes to Financial Procedure Rules

3.0 FINANCIAL ADMINISTRATION

3.1 In the following sub-sections 3.2, 3.3, 3.4 and 3.6 references are made to the use of RMS. Where RMS is not used, alternative arrangements must be approved by the Director of Finance.

3.2 Authorised Officers

3.2.1 Divisional Directors shall authorise appropriate officers to undertake the following duties. No other officers may undertake the functions of an authorised officer:

- (a) Raising purchase requisitions, normally on RMS, for works, supplies or services;
- (b) Approving purchase requisitions or otherwise generating official orders;
- (c) Certifying, normally on RMS, the receipt of works, supplies or services;
- (d) Approving personnel variations, time sheets, officer expense claims, petty cash, imprest accounts, change floats, cash advance forms, debtors accounts, internal recharges and end of year stock certificates; and
- (e) Certification for cheques, BACS authorisation, CHAPS authorisation and grant claims;
- (f) Certifying payments for goods, works and services.

3.2.2 Divisional Directors shall ensure that authorised officers have appropriate seniority and expertise to ensure that they are able to discharge the functions assigned to them for the purposes of these rules. Authorised Officers are accountable to their Divisional Directors for the exercise of these functions.

3.2.3 Divisional Directors shall ensure that arrangements are made for effective separation of duties when designating authorised officers, in order to provide adequate internal check over all transactions, and comply with any guidance given by the Director of Finance. Divisional Directors shall ensure that the arrangements for authorised officers are consistent with the budgetary control framework for their division (see Section 4 of these Rules) and that in particular cost centre managers' ability to manage their budgets is safeguarded.

3.2.4 Divisional Directors shall maintain, in a single place, an up-to-date record of all authorised officers, together with specimen signatures where appropriate. Lists of authorised officers can be found on InterFace.

3.2.5 References to **Authorised Officers** in the rest of this section of Financial Procedure Rules shall be read in the context of the above.

3.3 Orders for Works, Supplies and Services

3.3.1 The Director of Finance is responsible for providing a corporate system for raising purchase requisitions and creating orders (RMS). This system shall be used for all orders, except in emergencies, or in accordance with other arrangements specifically approved by the Director of Finance. In giving such approval, the Director of Finance shall ensure the alternative arrangements provide for effective financial control, and shall have regard to the continuing viability of the corporate arrangements.

3.3.2 Official orders shall be issued for all purchases, excluding the following items:

- i. Purchases through petty cash and imprest accounts.
- ii. Recurring charges such as gas, electricity and telephone charges and other charges for which a payments register or other method of recording/monitoring payments is more appropriate than an order.

3.3.3 When raising or approving purchase requisitions or placing orders, authorised officers, shall ensure that contract procedure rules have been complied with (this will be satisfied by placing orders with approved suppliers).

3.3.4 In those exceptional circumstances in which the corporate system is not used, Divisional Directors shall only obtain official order forms in accordance with arrangements approved by the Director of Finance and shall be responsible for their control and use.

3.3.5 Where urgent orders are given orally, they shall be confirmed immediately by an official order.

3.3.6 Requisitions and orders should be specific, e.g. they should state quantity, weight, size, grade, quality, and where practicable, price. Where supplies are ordered under contract, it is particularly important that the order and contract have the same specification of supplies required.

3.4 Payments for Works, Supplies and Services

3.4.1 The Director of Finance is responsible for providing a corporate system for the payment of accounts (RMS). Divisional Directors shall use this system for all payments except in accordance with other arrangements specifically approved by the Director of Finance. In giving such approval, the Director of Finance shall ensure that the alternative arrangements provide for effective financial control, and shall have regard to the continuing viability of the corporate arrangements.

3.4.2 Authorised officers shall ensure that payments for works, supplies or services are not made unless:

(a) Works, supplies or services have been appropriately procured. In this context, this means:

(i) Works, supplies or services are being supplied in accordance with an official order, and the amount invoiced is correctly payable. The official order number should be quoted on the invoice; or

(ii) Payment is in respect of a service regularly supplied (e.g. gas and electricity), and the amount invoiced is properly payable; or

(iii) Payment is made for works, supplies or services under contract, and the amount is properly payable under the terms of that contract.

(b) Works, supplies or services have been evidenced as received (unless the contract explicitly allows for payment in advance). This means:

(i) The works, supplies or services have been certified as received by an authorised officer (normally done through RMS); or

(ii) They have been certified as received under specific alternative arrangements which have been approved by a Divisional Director.

(c) Appropriate payment documentation exists. This means an invoice or contract certificate which satisfies VAT regulations.

3.4.5 Notwithstanding the above, a payment can be made where the Council has a clearly established contractual obligation to make a payment. The Head of Procurement should be advised of the circumstances.

EMPLOYEES COMMITTEE

TERMS OF REFERENCE

1. To ~~consider~~ **determine** the terms and conditions of service on which staff hold office (including procedures for their dismissal), ~~as appropriate-~~
2. To determine formal disciplinary, ~~grievance, harassment and discrimination~~, capability, ~~grading~~ and sickness procedure appeals.
- ~~3. To determine the cases in which recruitment benefits (including staff houses) are to be provided.~~
- ~~4. In respect of all officers, when a member level decision is required, exercise discretion in relation to superannuation benefits and contributions, extensions of service, gratuities and applications to serve after retirement age.~~
- ~~3. To act as the Council's Remuneration Committee~~
- ~~45.~~ To undertake the recruitment of and oversee the appointment, training, transfer between departments, promotion, relegation and dismissal (all subject to legislative constraints regarding statutory officers) in respect of:
 - i. The Head of Paid Service
 - ii. Strategic Directors
 - iii. Divisional Directors
 - iv. And any officer who reports directly to a Strategic Director, or Head of Paid Service for all or most of their duties (excluding anyone whose duties are solely secretarial or clerical or otherwise in the nature of support services)
- ~~56.~~ To designate one of the Council's officers as the Monitoring Officer as required by section 5(1) of the Local Government and Housing Act, 1989, in accord with the Council's Officer Employment Procedure Rules and all other legal requirements.
- ~~67.~~ To appoint one of the Council's officers as Director of Finance, being an officer responsible for the proper administration of the Council's financial affairs as required by section 151 of the Local Government Act, 1972, the appointment to be made in accord with the Council's Officer Employment Procedure Rules and all other legal requirements.
- ~~78.~~ To appoint Proper Officers on behalf of the Council for all statutory purposes further to Section 270(3), Local Government Act, 1972.

Membership

1. Employees Committee shall be a panel of five members appointed by the Monitoring Officer in consultation with the City Mayor or political group whips, as appropriate.
2. The maximum number of the Committee when it sits to hear any appeal shall be five, comprising the Chair and four panel members.
3. The Committee shall be subject to the rules on political balance.
4. The Committee's quorum shall be three.
5. Upon appointment the City Mayor or political group whips as appropriate shall determine, in consultation with the Monitoring Officer who shall be appointed as Chair of the meeting.
6. The Monitoring Officer, (or in her or his absence or ability to act her/his) Deputy will call all meetings of the Committee and determine the venue and time of the meeting.
7. The Chair of the meeting shall be consulted by the Monitoring Officer as to the business to be transacted at the meeting.

LICENSING AND PUBLIC SAFETY COMMITTEE

TERMS OF REFERENCE

1. To secure the health and comfort of the persons living or working in or visiting the City by requiring the observance of proper standards by persons owning or occupying property in or using the streets or other public places in the City.

~~2. To determine the issue of all statutory licences, approvals, certificates and consents and the maintenance of all statutory registers except in any case where a specific matter is referred to another Committee.~~

~~2.3.~~ All licensing and registration functions of the Council with regard to the following:-

Licensing Act 2003.

Gambling Act 2005

Hairdressers and barbers.

~~Killers of and dealers in game~~ (Legislation Repealed)

Sale of pet animals.

Caravan sites.

Conduct of animal boarding establishments.

Conduct of riding establishments.

Hackney carriages and private hire cars and operators and their drivers.

House to house collections.

Street collections.

Pool Promoters.

~~Amusements with prizes~~ (Now Gambling Act)

~~Societies Lotteries~~ (Now Gambling Act)

Exposure of goods for sale in streets (Street Trading).

Scrap metal dealers.

Dog Breeding establishments.

~~Track Betting.~~ (Now Gambling Act)

~~Sexual~~ Entertainment.

Dangerous Wild Animals.

Leicester Doorwatch Scheme

Distribution of free printed matter]

Skin Piercing and Tatoosts]

Street Cafés] New Legislation

Skips, scaffolding and deposits on the highway]

Zoos]

~~3. To determine the issue of all statutory licences, approvals, certificates and consents and the maintenance of all statutory registers except in any case where a specific matter falls within the Terms of Reference of another Committee or Sub-Committee of Council.~~

4. To enforce any other non-executive licensing legislation which the Council is required or empowered to enforce.
5. To exercise the Council's power to take legal proceedings in the public interest in relation to matters within the Committee's Terms of Reference.
6. To keep under review, comment on and provide advice to the City Mayor on policies relating to licensing and registration functions of the Council.

All matters within the Terms of Reference of the Licensing and Public Safety Committee which are not reserved to Full Council, or this Committee as stated ~~above~~below, or to ~~a the~~ Licensing Sub-Committee are delegated to the Director Local Services and Enforcement of Environmental Services.

MATTERS RESERVED TO THE LICENSING AND PUBLIC SAFETY COMMITTEE:-

1. Policy developments of strategic significance relating to the above Terms of Reference.
2. Such other matters as the Committee may from time to time reserve to itself for decision.

LICENSING SUB-COMMITTEE

TERMS OF REFERENCE

~~The Terms of Reference of the Licensing Sub-Committee shall be identical to those of the Licensing Committee with the exception of the consideration of policy issues, which the Licensing Committee has reserved to itself.~~

MATTERS RESERVED TO THE LICENSING SUB-COMMITTEE:-

- ~~1. All matters reserved for Member level decision as detailed in the Rules of Procedure~~
- ~~2. Applications for a licence or permit within the terms of reference of the Sub-Committee where an objection has been received.~~
- ~~3. Applications for a licence or permit within the Terms of Reference of the Sub-Committee where the Director of Environmental and Enforcement Services considers that an application should be referred to the Subcommittee for determination.~~

~~All matters within the Terms of Reference of the Licensing Sub-Committee which are not reserved to Full Council, the Licensing Committee or this Sub-Committee as stated above, are delegated to the Director of Environmental Services.~~

~~N.B. The City Council's Constitution [Council Procedure Rules 44 (i)(iv)] states that decisions which, in the opinion of the Monitoring Officer, are of a quasi-judicial nature, which includes the decisions of Licensing Sub-Committee may not be the subject of an Objection.~~

LICENSING SUB-COMMITTEES

TERMS OF REFERENCE

The Terms of Reference of a Licensing Sub-Committee shall include the functions of the Licensing and Public Safety Committee with the exception of the consideration of policy issues, which the Licensing and Public Safety Committee has reserved to itself.

MATTERS RESERVED TO THE LICENSING ENFORCEMENT SUB COMMITTEE

1. Applications for a licence, consent or permit where a representation had been received from a ward councillor, a member of the public or an external organisation.(Excluding the Licensing Act 2003 and Gambling Act 2005)
2. Applications for a licence, consent or permit where the Director of Local Services and Enforcement considers that the existing policy does not provide sufficient clarity on determining the application and/or where it would be more appropriate for the application to be determined by the Sub-Committee.
3. Applications for a licence, consent or permit which the law determines cannot be taken by an officer.

MATTERS RESERVED TO THE LICENSING HEARINGS SUB-COMMITTEE

1. Decisions required under the Licensing Act 2003 or the Gambling Act 2005, which the law determines cannot be taken by an officer.
2. Decisions required under the Licensing Act 2003 or the Gambling Act 2005 where the Director of Local Services and Enforcement considers that the existing policy does not provide sufficient clarity on determining the application and/or where it would be more appropriate for the application to be determined by the Sub-Committee.

All matters within the Terms of Reference of a Licensing Sub-Committee which are not reserved to Full Council, the Licensing and Public Safety Committee or a Sub-

Committee as stated above, are delegated to the Director of Local Services and Enforcement.

N.B. The City Council's Constitution [Council Procedure Rules 44 (i) (iv)] states that decisions which, in the opinion of the Monitoring Officer, are of a quasi-judicial nature, which includes the decisions of a Licensing Sub-Committee may not be the subject of an Objection.

PART 4I – OFFICER EMPLOYMENT PROCEDURE RULES

| This section includes changes approved by Council on [18th June 2015](#)

1. **RECRUITMENT AND APPOINTMENT**

(a) **Declarations**

- i) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing councillor or officer of the Council; or of the partner of such persons.
- ii) No candidate so related to the City Mayor, a councillor or an officer will be appointed without the authority of the relevant chief officer or an officer nominated by him/her.

(b) **Seeking support for appointment**

- i) The Council will disqualify any applicant who directly or indirectly seeks the support of the City Mayor or any councillor for any appointment with the Council. The content of this paragraph will be included in any recruitment information.
- ii) Neither the City Mayor nor any councillor will seek support for any person for any appointment with the Council.

2. **RECRUITMENT OF HEAD OF PAID SERVICE AND DIRECTORS**

Where the Council proposes to appoint a director and it is not proposed that the appointment be made exclusively from among their existing officers, the Council will:

- (a) draw up a statement specifying:
 - i) the duties of the officer concerned; and
 - ii) any qualifications or qualities to be sought in the person to be appointed
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned in paragraph (1) to be sent to any person on request.

3. **APPOINTMENT OF HEAD OF PAID SERVICE**

- (a) The full Council will approve the appointment of the Head of Paid Service following the recommendation of such an appointment by a committee or sub-committee of the Council. That committee or sub-committee must include at least one member of the Cabinet.
- (b) The full Council may only make or approve the appointment of the Head of Paid Service where no well-founded objection has been made by any member of the Cabinet.

4. APPOINTMENT OF STRATEGIC DIRECTORS AND DIVISIONAL DIRECTORS

- (a) A committee or sub-committee of the Council will appoint Strategic Directors and Divisional Directors. That committee or sub-committee must include at least one member of the Cabinet.
- (b) An offer of employment as a Strategic Director or a Divisional Director shall only be made where no well-founded objection from the City Mayor or any other member of the Cabinet has been received.

5. OTHER APPOINTMENTS

- (a) Appointment of officers below Divisional Director is the responsibility of the Head of Paid Service or his/ her nominee, and may not be made by Councillors.

6. DISCIPLINARY ACTION

- (a) Suspension. The Head of Paid Service, Monitoring Officer and Director of Finance may be suspended whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months.

- (b) ~~Dismissal. No dismissal of the Head of Paid Service, the Monitoring Officer or the Director of Finance shall take place other than in accordance with a procedure that is compliant with the Local Authorities (Standing Orders)(England) Regulations 2001 as amended by the Local Authorities (Standing Orders)(England)(Amendment) Regulations 2015~~ independent person. ~~No disciplinary action may be taken in respect of any of those officers except in accordance with a recommendation in a report made by a designated independent person.~~

- (c) The City Mayor or Councillors will not be involved in the disciplinary action ~~(meaning (i) dismissal; or (ii) other disciplinary action short of dismissal)~~ against any officer below Divisional Director except where such involvement is necessary for any investigation or inquiry into alleged misconduct, or where the Council's disciplinary, capability and related procedures allow a right of appeal to Members.

7. DISMISSAL

~~The City Mayor or Councillors will not be involved in the dismissal of any officer below Divisional Director except where such involvement is necessary for any investigation or inquiry into alleged misconduct, though the Council's disciplinary, capability and related procedures, as adopted from time to time may allow a right of appeal to members in respect of dismissal.~~

LEICESTER CITY COUNCIL
GOOD PRACTICE GUIDANCE FOR MEMBER INVOLVEMENT IN PLANNING
AND DEVELOPMENT **MANAGEMENT DECISIONS**
JUNE 2015

1. WHY GOOD PRACTICE GUIDANCE IS REQUIRED

- 1.1 As an Elected Member one of your key tasks may be to get involved in planning matters through representing your Constituents; or as a Member of the Council's Planning & Development **Management** Committee deciding planning matters (e.g. applications and enforcement); or as an Executive Member considering development of the Council's planning policies.
- 1.2 The key purpose of Planning Committee decision making is the consideration of private proposals and balancing these against the wider public interest. Committee Members should consider themselves strategic decision makers. Planning decisions can be controversial and sometimes questions are raised about planning decision making. The aim of this Guidance is to demonstrate that in the planning process in Leicester there has been objective transparency and any decision is justified based on material and relevant planning considerations.

2. WHEN THE GOOD PRACTICE GUIDANCE APPLIES

- 2.1 This Guidance applies at all times to Committee Members involved in the planning decision making process. This includes meetings of the Committee, meetings in connection with any pre-application process, meetings with Officers or the public e.g. consultative meetings.
- 2.2 It also applies to non-Committee Members when they have any involvement in a planning matter be it either their own Planning Application, or that of somebody else's (whether it affects their own property or not), or through being lobbied.

2.3 If you have any doubts about the application of the Guidance, you should take advice from the Head of Planning and/or the **Monitoring Officer**.

3. RELATIONSHIP WITH THE MEMBER CODE OF CONDUCT

3.1 The City Council's Member Code of Conduct (this is the document which, by law, must set out expected standards of behaviour of all Elected Members, breaches of which are reported to the Monitoring Officer and are dealt with under the Standards arrangements) must be complied with throughout the Committee decision making process therefore:

- Do apply the rules in the Member Code of Conduct first at all times. Members should pay particular regard to the rules concerning declaration of interests.
- Do then apply the advice contained in this Guidance which seeks to supplement the Members Code of Conduct for the purposes of planning decision making or involvement in planning matters as a non-Committee member.

3.2 If you do not follow this Guidance the following risks arise:

- The City Council is at risk of legal proceedings (Judicial Review) on the legality of any decision taken; and/or a complaint to the Ombudsman for maladministration and
- As a Member a complaint could be made against you regarding your conduct.

3.3 In the event of a conflict between this Good Practice Guidance and the Members' Code of Conduct the latter will prevail.

4. MEMBERS' OWN PLANNING APPLICATIONS

4.1 For obvious reasons any person who has a significant interest in the outcome of a planning decision should not take part in the decision making process. There is no objection to a Member (as a citizen) making their own planning application, but they should be open and transparent about it and declare the existence and nature of their interest.

4.2 Where a Member intends to submit a planning application the following applies:

- Consider employing an agent to act on your behalf in dealing with Officers and in relation to any public speaking at the Committee (but see below).
- Do not allow the application to be submitted on your behalf in a third parties name (including that of any agent engaged by you). Use your own name as the applicant.
- Ensure that you complete the Authority Employee/Member section of the planning application form
- Notify the Council's Monitoring Officer in writing of the application no later than submission of the proposal.

4.3 Once the application has been submitted, or where Pre-application advice is sought from the local authority:

- Do not participate or give the appearance of trying to participate in the making of any decision on the application by the City Council. This is a Disclosable Pecuniary Interest (DPI) and under the Localism Act 2011 participation is a criminal offence.

- Do not get involved in the processing of the application.
- Do not seek or accept any preferential treatment or place yourself in a position that could lead the public to think you are receiving preferential treatment because of your position as a Member.
- Always be open and transparent about the application particularly in your dealings with Planning Officers and do not assume the Officer knows that you are a Member.
- You should:
 - Note that the application/other relevant planning matter will always be reported to the Committee for decision. It is permissible for you to make written representations to Officers about your proposal.
 - Think very carefully about whether you attend the Planning Committee that considers the matter. In circumstances where an Applicant has a right to speak, you will need to arrange for someone to speak on your behalf, save in circumstances where the Monitoring Officer has granted you a dispensation in accordance with the Member Code.

4.4 For obvious reasons any person who has a significant interest in the outcome of a planning decision should not take part in the decision making process. As such members should also follow the above guidance where they have a significant interest in a planning application which has been submitted but which is not their own application. If you are unsure whether you have a significant interest in the outcome of a planning application you should seek advice from the Council's Monitoring Officer prior to taking any steps in relation to such an application.

5. COMMITTEE MEMBERS' OTHER INTERESTS

- 5.1 For Committee Members, and depending on the factual circumstances, an interest arising may require declaration or mention in accordance with the Member Code of Conduct, either as a DPI, an Other Disclosable Interest (ODI) or a concern about apparent bias or predetermination. In accordance with the Code of Conduct and the Council's Constitution where a Member has a DPI or a 'prejudicial' ODI you may not vote or participate in a decision on the matter in respect of which the interest arises and must leave the room unless they have been given a dispensation by the Monitoring Officer in accordance with the Member Code of Conduct.
- 5.2 Declarations of bias and predetermination should also require the Member to refrain of taking part in decision-making, or the influencing of decisions (see section 8 below).
- 5.3 A declaration of a non-prejudicial ODI will merely require the Member to declare the interest but they may lawfully remain in the meeting and proceed to contribute to the decision-making.
- 5.4 Where a planning matter directly affects a Committee Member or their family/friends (e.g. a Planning Application next door to where the Member lives; or an application lodged by a family member), then advice should be taken from the Council's Monitoring Officer about involvement. There are obvious dangers in the Member taking part in the planning decision-making process (see 5.1). Where a Committee Member has a DPI (note that a DPI can arise not only from a Member' own application but also one that directly affects them e.g. next door neighbour's application) or prejudicial ODI, as well as leaving the room they will also be unable to address the Committee on the application. However the Member can arrange for a representative to address the Committee on their behalf and such representations should be expressed as being made on behalf of Councillor X as a person directly affected by the

application. Similarly if the Committee Member wishes to submit a written representation, it should be expressed to be submitted from or on behalf of Councillor X as a person directly affected by the application. This practice should also apply to Committee Members who make declarations in respect of predetermination and apparent bias (see section 8).

6. ATTENDANCE OF NON-COMMITTEE MEMBERS

- 6.1 Elected Members who are not Members of the Planning Committee do, in certain circumstances, have the right to speak at a Committee meeting.
- 6.2 Where a non-Committee Member wishes to make representations to the Committee s/he needs to notify the Committee Chair and Democratic Services no later than 12 noon of the day of any Committee Meeting. It is a matter for the Chair's discretion to allow non-Committee Members to speak if they have not given the required notification.
- 6.3 Non-Committee Members will be required to make an appropriate declaration. Members who have a DPI or prejudicial ODI may only attend and speak if they have received a dispensation granted at the discretion of Monitoring Officer in accordance with the Member Code.
- 6.4 Non-Committee Members will sit in the public gallery and the Chair will call them to the Committee table to sit in the designated place.
- 6.5 **A Member who wishes to speak must follow the public speaking protocol where applicable. A non-Committee Member is expected to keep his/her representations within 5 minutes, as are all public speakers.** After the non-Committee Member has spoken, the Chair will invite Officers as appropriate to respond but the non-Committee Member will not have a right of reply.
- 6.6 **Subject to the DPI/ODI provisions of paragraph 6.3 above, exceptionally a Committee Member may wish to stand down to make representations to**

Committee as a Non-Committee Member. The same provisions as above will apply to Committee Members in these circumstances. **The Committee Member will need to take extra care to ensure that they make the appropriate declarations.**

- 6.7 Where a planning matter directly affects a non-Committee Member as an individual, such that they have a DPI or prejudicial ODI, it is not permissible for the Member to address Committee. As with clause 5.2 above (in respect of Committee Members) the Member can arrange for a representative to address Committee on their behalf.
- 6.8 **Although a Committee Member can make representations (either on their own behalf or on behalf of a constituent) on an application that is anticipated to be decided by officers under delegated powers, should this application in the event be referred to Committee then the Councillor should not take part in the decision making.**

7. MEMBER INVOLVEMENT IN WARD ISSUES

- 7.1 All Members will respect the expectation that in relation to planning issues in any Ward the primary responsibility for dealing with them is on the relevant Ward Members.
- 7.2 In the case of a Member who is also a Committee Member it is suggested that they should not deal with planning issues in their Ward. In such circumstances a fellow Ward Member should be asked to assist. Should the issue result in a Member attending at a Committee to make representations the Chair will enquire of the Member whether or not they have had contact with the relevant Committee Member and if there has been no contact the Chair has discretion whether or not to allow the representations to be made.
- 7.3 There are circumstances where an applicant or objector may want to contact a Member outside of their Ward (e.g. in a situation where an objector does not

have the support of Ward Members). Where any Member is approached to make representations to, or attend a Planning Committee meeting on behalf of any one individual in relation to any planning issue not in their Ward, they are expected as a matter of courtesy to notify the Ward Members concerned. In the absence of such notification, the Chair has discretion whether or not to allow the Member concerned to attend **and speak** for that purpose at any Committee Meetings. Any non-ward Members speaking at Committee in this capacity shall be speaking as a Member. According to law Members cannot choose to shed their elected Member status when addressing a Committee of their Council.

8. DECISION MAKING - BIAS AND PREDETERMINATION

- 8.1 Planning Committee decisions must only be made on the basis of material and relevant planning considerations/merits.
- 8.2 Predetermination arises when someone has a closed mind so that they cannot consider any subsequent information presented and they have made their mind up. This can lead to legal challenges.
- 8.3 To participate in decision making on planning matters, Committee Members must not have a closed mind. Decisions can only be taken once all Committee Members present have read, seen and heard all the information presented including the Officers Report, any Addendum Report and information provided under the public speaking provisions.
http://www.cabinet.leicester.gov.uk/documents/s52419/PublicSpeakingLeaflet_Jun12_Copy2a1.pdf.
- 8.4 The Localism Act 2011 makes it clear that a Member does not have a closed mind on a particular issue just because they have indicated what view they may or may not take before the issue is decided. This means that a Committee Member is not prevented from participating in decision making in relation to a matter which they have campaigned on a particular issue or have

made public statements about any approach provided at the time of decision making the Committee Member has not closed their mind.

8.5 For Committee Members to refrain from having a closed mind they must be amenable to changing their views in the light of all the information presented to them. **In order to avoid perceptions of and challenges of pre-determination it is advisable for Committee Members to avoid making categorical public statements in relation to applications for Planning Permission, Listed Building and conservation area matters if they subsequently intend to participate in the decision making process at Committee.**

8.6 Great care is needed where any application before the Committee involves the Council as developer/landowner. Council applications should not be given any preferential treatment.

9. PRE-APPLICATION PRESENTATION/MEETINGS WITH APPLICANTS, DEVELOPERS AND OBJECTORS

9.1 It is recognised that pre-application discussions assist with the planning process provided they take place within clear parameters and governance arrangements.

9.2 Member engagement in pre-application discussions on major developments (10 or more dwellings or 1,000 square metres commercial or other floor space) is encouraged. The following safeguards have been developed to prevent any allegation of bias or predetermination being made against Committee Members:

- Do not agree to any formal meeting with applicants, developers or groups of objectors without consulting the Head of Planning (for ad hoc/informal meetings refer to Section 11 “Lobbying” below).

- A Planning Officer must always be present at any planned meetings. It will be for the Officer to explain the constraints on Members. The Officer will prepare a written note of the meeting which will be publicly available (in circumstances where any applicant/developer asked for proposals to be treated as confidential any public note will cover non-confidential issues only and general advice given).
- Remember to follow the advice on lobbying (see below).
- Committee Members can ask questions and **make preliminary comments** on any proposals but should not give the impression/appearance from any such questions etc. that they have a predetermined view.
- Do report any prior significant contact with any applicant or other parties to the planning case officer or Head of Planning and explain the nature and purpose of the contacts and your involvement and ask him/her to ensure that this is recorded on the planning file.
- Do make it clear that at any meeting/presentation it is not part of the formal decision making process and any view expressed by you as a Member is both personal and provisional since not all relevant information will be to hand and the views of other interested parties may not have been obtained.

9.3 The Head of Planning will arrange for appropriate presentations to be made in respect of significant Planning Applications which will be open to all Members. Such presentations will be of a fact finding nature to enable all Committee Cabinet Members to become familiar with what the application proposes and to ask questions. As mentioned above Committee Members can ask questions and **make preliminary comment** on any proposals but should not give the impression/appearance from any such questions etc. that they have a closed mind. In this way there is no objection or bar to them subsequently

sitting on the Committee and making a decision on the application as presented.

10. REFERRAL OF APPLICATIONS FOR DECISIONS TO THE PLANNING AND DEVELOPMENT CONTROL COMMITTEE

- 10.1 Members should contact the Head of Planning as soon as possible about any applications included on the weekly list of applications circulated to them that they consider should be the subject of a Committee decision. **This should be because they consider that there is a planning reason why the matter needs to be considered by the Committee rather than under delegated powers. The referral process should not be used simply to produce a different outcome from that anticipated from an officer delegated decision**
- 10.2 **This request is separate from the making of representations – for or against - that a Member may also make on their own or another’s behalf. A committee referral request does not in itself indicate the Member’s own view on the application. A member may or may not choose to express their own view on the proposals (see also 6.8 above).** Contact should be written and preferably by e-mail. The planning reasons for the request must be given. Where appropriate a Planning Officer is able to assist Members with the formulation of reasons which can include design, highway issues and impact on amenity of local residents.
- 10.3 Members need to be aware that to meet Government targets decisions on applications are taken quite quickly after the circulation of a weekly list and they are advised therefore to check with case officers of timescales to ensure any requests they make can be considered.
- 10.4 If any Member wishes their particular view to be considered and included in the Planning Officer’s Report such representations must be made in writing to the planning officer as soon as practicable after the Member has been alerted to the existence of the Planning Application.

11. LOBBYING OF COMMITTEE MEMBERS

11.1 Lobbying by the public or other Members is a legitimate political activity. When Committee Members are lobbied, care needs to be taken to avoid any challenge of predetermination or bias or an allegation of breaching the Member Code of Conduct.

11.2 So:

- While you can listen to what people want to say to you about planning proposals and you can always give procedural advice as to how applications should be taken forward and agree to pass any comments on, it would be better when contacted directly to pass the matter on to a fellow Ward Member not on the Committee or indicate that contact be made with the Head of Planning or appropriate Planning Officer (see section 7).
- Do not favour any person, company, group or locality or make any commitment to a particular point of view on a planning application prior to its consideration by the Committee.
 - Do not make up your mind or give the impression of making up your mind (particularly in relation to an external interest or lobby group) prior to the Committee Meeting and to hearing the Officer presentation and all information presented to the Committee. **You should carefully consider whether accepting membership of, or attending external interest, advisory or lobby groups might lead to a position of conflict, or appearance of conflict, with your neutral decision making responsibility as a Committee Member (see 12.1 below)**
 - When you have received any direct representations in connection with any Planning Application before the Committee you need to declare the nature of those representations e.g. e-mail received, photographs or

drawings received, attendance at meeting, any presentations, any meetings with the applicant or third party etc. You should also disclose to the Committee the general tenor of your response (i.e. supported/opposed/remained neutral and gave procedural advice/referred to another Councillor etc). Where the lobbying results in your having a closed mind you should, in addition, withdraw from sitting on the Committee for that item, preferably by prior arrangement.

- 11.3 Political group meetings prior to the Committee Meeting should not be used to determine how you or other Members should vote. The Ombudsman has ruled that the application of a group whip to a planning matter could constitute maladministration.

12. MEMBERSHIP OF OUTSIDE BODIES

- 12.1 **If you are a Committee Member do not become a member of any organisation whose primary purpose is to promote, oppose or advise on development proposals, in Leicester, whether generally or specifically. The reason for this is the obvious risk of bias or predetermination.**

- 12.2 As a Member there is no prohibition on joining general interest groups which might reflect your areas of interest and which concentrate on issues beyond particular planning proposals such as CPRE or local groups such as the Civic Society. Where you are a Committee Member it is suggested that you do not get involved in any representations made by an external interest groups you are involved in and make the appropriate declaration at any subsequent Committee Meeting. **Such a declaration should explain the precise nature of your involvement or engagement with the item/application, and should include a description of the views that you expressed on the matter.**

13. COMMITTEE ADDENDUM REPORT

- 13.1 To enable any last minute issues to be considered, the Director prepares an Addendum Report. Committee Members will be provided with the report by e-mail and it will be available in the Group Rooms from 16.00 hours on the date of the Committee. Where the last minute issues lead to a fundamental change of recommendation (e.g. from refusal to approval or vice versa), the Addendum Report will recommend deferral unless the possibility has already been identified in the original report.
- 13.2 As necessary the Director or Planning Officer presenting the Report will refer to the Addendum Report when relevant as part of the oral presentation in connection with reports before the Committee.
- 13.3 Representations received after the Addendum Report has been finalised, will be summarised orally.
- 13.4 Written representations and supporting materials of applicants, objectors and/or third parties, including those arising from public speaking will only be circulated to members **if they have been provided to Democratic Services by 1600 hours on the day before the meeting**

14. RUNNING ORDER OF COMMITTEE AGENDA

- 14.1 The Chair has discretion to determine the order in which Committee Reports are considered and s/he will consider this in relation to the number of members of the public/Members who are present who wish to speak on any particular report.
- 14.2 **The Council has introduced public speaking protocol for public speaking the Planning Committee which can be found here**

http://www.cabinet.leicester.gov.uk/documents/s52419/PublicSpeakingLeaflet_Jun12_Copy2a1.pdf

This sets out the process and procedure to be followed including the Order of speakers. Prior to any summing up by the Committee Chair, the Head of Planning will be entitled to provide final Officer comment.

14.3 Members of the Committee may seek points of factual clarification on the application under consideration from applicants (or their agents), Statutory Consultees or people making representations to the Committee meeting. It is not appropriate for Committee members to seek to negotiate to secure amendments to the application as the application is presented for determination at the meeting. In the event that the Chair feels a point of clarification is not appropriate then they will have the discretion to intervene.

14.4 Other than in accordance with the protocol for public speaking and in the circumstances described at 14.3 above an applicant shall have no general free-standing right to speak at Committee

15. VOTING

15.1 Voting at the Planning Committee will be by a show of hands. The other provisions in the Council's Constitution with regard to voting (request for recorded vote, chairs casting vote etc.) will apply.

16. DEPARTURES FROM OFFICER RECOMMENDATIONS

16.1 Committee Members wishing the Committee to consider a different recommendation from that made by the Director must move an amendment giving planning reasons and have it seconded. As necessary the Chair will then seek clarification for the planning reasons and take advice from the Head of Planning and Solicitor. The planning reasons will be recorded in the minutes.

16.2 Where no amendment is moved and seconded but the Committee votes to reject the Officer recommendation, the Chair will ask the committee to clarify the planning reasons for the vote, which will form the basis of a second vote. If this is not possible, the application will be deferred until the next meeting of the Committee. At that subsequent meeting the Director will table his understanding of the reasons why the Committee rejected the recommendation and the Committee will then vote to confirm the reasons put forward by the Director or not as the case may be.

17. DELEGATION OF DECISIONS TO OFFICERS

17.1 The Committee may agree to delegate any further decision (e.g. finalisation of conditions or section 106 Agreements to be attached to the grant of Permission) to the Director even where the decision would normally be reserved to the Committee under the Scheme of Delegation of Development Control Decisions to Officers.

18. SITE VISITS

18.1 Officers will seek to ensure that full details and context of proposals can be reasonably ascertained from the information in the Committee Report and the photographs and plans available from the screen presentation.

18.2 Exceptionally site visits may be required where there is a need to view particular site factors in terms of the weight to be attached to them in making the decision.

18.3 Where, in such circumstances, a Committee Member feels a site visit is necessary it must make the request for a site visit to [the Head of Planning] no later than two days of the publication of the Agenda Papers (ie by 1700 on the Thursday following publication) to allow arrangements to be made for the visit to be undertaken on the Monday preceding the meeting of the Committee.

- 18.4 All requests for site visits must detail the planning reasons and aspects of the site or the proposal which are considered to merit a site visit; the requests will be determined by the Head of Planning in consultation with the Chair in with respect of the availability of appropriate presentational material and photographs.
- 18.5 Exceptionally, where there is a recommendation by Members during a meeting of the Committee Meeting to defer the application to allow for a site visit to take place, this must be moved and seconded and agreed by the Committee with valid planning reasons being given for the decision, which will be minuted
- 18.6 Site visits do not have decision making status and will be arranged by the Head of Planning. All Committee Members will be notified of the visits by Democratic Support. A Planning Officer will be present throughout. Site visits are for Committee Members only, and no other Members will be permitted to attend.
- 18.7 On no account should any Committee Member present at a site visit express a view on the merits of the application and wherever possible not engage in any dialogue with the Applicant/Owner, or any other third parties during the visit.
- 18.8 The expectation will be that the Committee Members will attend the site visit and 1300hrs the Monday preceding each Planning Committee will be the time generally reserved for visits. Where a Committee Member is not able to attend the site visit s/he may visit the site separately although Members should not enter onto the site without the Owner's consent. As with an organised site visit an individual Member should not engage in any dialogue about the application etc.

19. ATTENDANCE AT COMMITTEE

- 19.1 Planning Applications may in some cases come before the Committee on more than one occasion. For example, the Committee may decide to defer an application for further information.
- 19.2 It is important that Committee Members taking decisions are in possession of all the facts. Attendance of Members on all occasions when an application has been considered by Committee will not only demonstrate that Committee Members are fully informed but will also ensure high quality consistent and sound decisions are made minimising the risks of any legal challenge.
- 19.3 If as a Committee Member you have not been able to attend meetings in connection with an application that has been deferred you should only take part in such a decision making process if you are satisfied that you can reasonably and properly do so in all the circumstances. Advice on involvement can be obtained from the Head of Planning and the Monitoring Officer.

20. OFFICERS

- 20.1 Members and Officers have different but complementary roles. Both serve the public but Members are responsible to the electorate while Officers are responsible to the Council as a whole. Accordingly:
- Do not put pressure on Officers to put forward a particular recommendation. This does not prevent you from asking questions or submitting views to the Head of Planning or the Director.
 - In the first instance any contact by Members (Committee or non-Committee) about planning issues should be with the Head of Planning or other Officers authorised by the Director to have contact with

Members. Note that any contact between a Member and Officer will be recorded in the Council's file.

21. APPEALS

- 21.1 The Director will prepare and where necessary present the City Council's case in an appeal based on the terms of the decision and the material considerations on which the decision was made. The best possible arguments and available evidence in support of the decision will be presented whether or not the Committee's decision was in accordance with the Director's recommendation.
- 21.2 Where the Committee's decision was not in accordance with the Director's recommendation and any subsequent appeal is to be determined at a Hearing or Public Inquiry the Chair or as appropriate an alternative Committee Member **may** be required to be the Council witness. The Head of Planning will arrange appropriate Officer support but in accordance with professional requirements, will be provided in a way so as Officers are not put in a conflict of interest situation arising from their professional opinion on the matter in question.

22. TRAINING

- 22.1 It is mandatory that Members serving on the Committee must attend annual refresher training and where appropriate initial training. Substitute Members have to comply with the training requirement.
- 22.2 Initial basic training will be provided at the start of each Council Municipal Cycle (2015 etc.). Mandatory annual refresher training will be arranged to take place as soon as possible after the Council's Annual General Meeting in May.