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C1 GENERAL

C1.1 Compliance with Contract Regulations

C1.1.1 All Contracts are to comply with these Contract Regulations and the Council's Sustainable Procurement and Commissioning Strategy

C1.1.2 Each Responsible Officer will ensure that Contracts let by their service comply fully with these Contract Regulations and the Council's Sustainable Procurement and Commissioning Strategy

C1.2 Interpretation

The Contract Regulations shall be interpreted in accordance with this schedule

C1.3 Exemptions and Contraventions

C1.3.1 Exemption may be made from a requirement of these Contract Regulations in exceptional circumstances in consultation with the appropriate Portfolio Holder and by Executive resolution. The resolution will include the reasons for the Exemption.

C1.3.2 Where due to the nature of the circumstance it is not practicable to obtain prior approval to the Exemption the appropriate Responsible Officer will consult with their Directors, City Solicitor & Head of HR, Corporate Managers and the Chief Finance Officer prior to entering into contract. The exercise of this authority will in every case be reported to the next meeting of the Executive. If the proposed Exemption is likely to result in the incurring of expenditure the Responsible Officer will also need to satisfy Financial Regulation 21.

C1.3.3. The appropriate Portfolio Holder and the Executive will be informed of every Contravention of these Contract Regulations.

C1.4 Authority

No Contract shall be entered into and no person included or excluded from:

- any list of tenderers.
- any list of persons with whom the Council may negotiate

- any Standing List, or
- the Approved List

unless duly authorised by the Responsible Officer in consultation with the appropriate Directors, City Solicitor & Head of HR, Chief Finance Officer, Corporate Managers in the case of contracts up to £75,000 value and the Director, City Solicitor & Head of HR, Chief Finance Officer, Corporate Manager and the relevant Portfolio Holder in the case of contracts over £75,000 value.

C1.5 Legal Requirements

Every Contract will be let, and be in accordance with, all legislative requirements. Those requirements will prevail in the case of any conflict with these Contract Regulations.

C1.6 Duties of Responsible Officer

For each Contract or each type of Contract, and before starting the letting of a Contract, the Responsible Officer will consider, taking advice as necessary, and if the Contract Value exceeds £75,000 record in writing that consideration has been given to:

- The nature and Contract Value of the Contract and the requirements of these Contract Regulations, which will apply.
- The Financial Regulations of the Council
- How best value for money can be obtained.
- The health and safety implications of the Contract identified by way of a risk assessment.
- The equal opportunities and Human Rights implications of the Contract.
- The sustainability implications of the Contract.
- The workforce implications of the Contract.
- The advice of the City Solicitor & Head of HR - Legal on the terms of the Contract.
- The advice of the Chief Finance Officer on obtaining security or guarantees and on ensuring the Contractor has the required financial capacity to carry out the Contract.
- Whether the contractor should be required to obtain public liability or other insurance.
- Any other relevant legal requirements and Council policies and procedures including the use or otherwise of one or more clauses contained within contract regulation C5.

C1.7 Contract Value

Contract Value will not be underestimated, or Contracts subdivided in order to avoid the application of any provision of these Contract Regulations.

C2 LETTING CONTRACTS

C2.1 Procedures

Every Contract will be let in accordance with the relevant procedure in this Contract Regulation.

C2.2 Routine and Regularly Recurring Contracts

Where a Responsible Officer purchases goods and services of a routine and regularly recurring nature, either through a framework or buying consortium agreement, compliance with the remaining provisions of this Contract Regulation is not required for each and every Contract. The Responsible Officer will ensure however compliance in respect of such proportion of the Contracts and at such periods as in the opinion of the Responsible Officer is necessary to provide value for money.

C2.3 Contract Value Less than £75,000

C2.3.1 Reasonable steps will be taken to ensure value for money for the Council or the Contract will be let as if it were a Contract of Contract Value £75,000 or more.

C2.3.2 Having due regard to resources, work, services and supplies available within the Council reasonable steps will include, as a minimum:

- obtaining more than one competitive quote where the Contract Value exceeds £10,000
- inviting at least three competitive quotes in writing where the value exceeds £30,000.

C2.3.3 Competitive quotations for Construction Contracts will be obtained from persons on the Approved List. In the absence of an appropriate panel or of an adequate number of contractors on the appropriate panel a contract will be let in compliance with Contract Regulation 2.5.

C2.4 Contract Value £75,000 or more – Construction Contracts

C2.4.1 The City Surveyor will maintain an Approved List of construction related contractors, the list being divided into panels of Contractors suitable for different types of work at different Contract Values.

C2.4.2 For each Contract:

- preliminary invitations to tender will be issued to all Contractors on the appropriate panel, and
- from the Contractors who respond positively to the preliminary invitation a number will, on the basis of pre-determined criteria, be selected to be invited to tender.

- C2.4.3 In the absence of an appropriate panel or of an adequate number of Contractors on the appropriate panel a contract will be let in compliance with Contract Regulation C2.5.
- C2.5 Contract Value £75,000 or more – Other Contracts
- C2.5.1 Choice of Procedure
- Contracts will be let by the Restricted or the Open Procedure, except as may be allowed under Contract Regulation C2.5.5 or C2.6.
- C2.5.2 Contract Publicity
- Each Contract to be let under the Restricted or the Open Procedure will be given appropriate publicity to bring it to the attention of suitable persons. This publicity will include a specialist or trade advertisement where the Contract Value exceeds the current EU Thresholds. All contracts will be displayed on the Council's Website.
- C2.5.3 Restricted Procedure
- Tenders will be invited from amongst those persons who respond to the contract publicity, selected by reference to predetermined Criteria.
- C2.5.4 Open Procedure
- Tenders will be invited from all persons who respond to the contract publicity.
- C2.5.5 Standing List
- The Chief Finance Officer and City Surveyor to approve the creation or modification of approved contractor standing lists.
- Each list will be reviewed at intervals of not more than three years.
- C2.5.6 Contracts of a Specialist Nature
- Where due to the nature of the goods, services or works required the Responsible Officer can demonstrate that only a limited number of contractors can provide them the invitation to tender can be limited to those contractors.
- C2.5.7 Reserved Contracts
- Where due to the nature of the goods, services or works required the Responsible Officer can demonstrate there is a supported factory or business that employs in excess of fifty per cent of the workforce who are disabled then the Responsible Officer can in consultation with the Chief Finance Officer reserve the contract for that organisation.

C2.5.8 Framework Agreements

Where due to the nature of the goods, services or works required the Responsible Officer can demonstrate that a framework agreement is the most economically advantageous way to provide the goods, services or works then they can, in consultation with the Chief Finance Officer, implement a framework agreement.

C2.5.9 Electronic Auctions

Where due to the nature of the goods, services or works required the Responsible Officer can demonstrate that an electronic auction is the most economically advantageous way to provide the goods, services or works then they can, in consultation with the Chief Finance Officer, organise an electronic auction.

C2.5.10 Dynamic Purchasing Systems

Where due to the nature of the goods, services or works required the Responsible Officer can demonstrate that a dynamic purchasing system is the most economically advantageous way to provide the goods, services or works then they can, in consultation with the Chief Finance Officer, implement a dynamic purchasing system.

C2.6 Negotiated Procedure

C2.6.1 This procedure, for the letting of a contract, may be adopted by a Responsible Officer in consultation with the appropriate Portfolio Holder and, in the case of Contracts exceeding £75,000 value, the prior written approval of the Chief Finance Officer where:

(1) Public Procurement Legislation governs the choice of contract award procedure, in the circumstances permitted by the Public Procurement Legislation.

(2) In other cases, if:

- there has been an unsatisfactory response to an invitation to tender;
- for technical, artistic or other good reasons the contract can only be performed by a particular person
- for any unforeseeable reasons of urgency where there is insufficient time to invite tenders;

and in all cases the reason for the adoption will be recorded.

C2.6.2 Negotiations will be conducted by a minimum of two officers personally authorised by the relevant Responsible Officer and such other persons as the Responsible Officer may consider necessary.

- C2.6.3 The relevant Responsible Officer will make arrangements to ensure the proper conduct of negotiations and the satisfactory recording of the outcomes of negotiations and those outcomes including a recommendation as to who should be awarded the contract will be reported to the relevant Director/City Solicitor & Head of HR/Chief Finance Officer/Corporate Manager and Portfolio Holder.
- C2.7 Award of Contract
- C2.7.1 Every Contract will be awarded to the Contractor submitting the most economically advantageous tender or quotation selected by reference to pre-determined Criteria, which may include social and environmental issues.
- C2.7.2 Where this is likely to lead to the acceptance of a tender or quotation which is not the lowest, where payment is to be made by the Council, or not the highest, where payment is received by the Council the Responsible Officer will record the reasons for doing so and obtain the prior approval of the appropriate Director/City Solicitor & Head of HR/Chief Finance Officer/Corporate Manager and Portfolio Holder before awarding the contract.
- C2.7.3 Following the decision to award a contract a minimum ten calendar day stand still period is required if the notification is sent by electronic means or a minimum fifteen calendar day period if sent by other means to enable unsuccessful tenderers to seek clarification as to why they have been unsuccessful before formal acceptance of the winning tender.
- C2.8 Nomination
- The Contract will not require the Contractor to use a nominated sub-Contractor or Supplier. In all such cases three or more Sub-Contractors or suppliers will be nominated.
- C2.9 Criteria
- C2.9.1 All criteria for selecting tenderers, awarding Contracts or for inclusion in a Standing List will be pre-determined and recorded.
- C2.9.2 All criteria for awarding Contracts will be notified to tenderers, and will always include price and criteria relating to the quality of the work, services or goods to be provided.
- C2.10 Competitive Dialogue
- C2.10.1 This procedure, for the letting of a contract, may be adopted by a Responsible Officer in consultation with the appropriate Portfolio Holder and the prior written approval of the Chief Finance Officer for contracts where:
- It is not objectively possible to define the technical means capable of satisfying the needs or objectives of the contract and/or
 - It is not objectively possible to specify the legal and/or financial make-up of the project.

- C2.10.2 Negotiations will be conducted by a minimum of two officers personally authorised by the relevant Responsible Officer and such other persons as the Responsible Officer may consider necessary.
- C2.10.3 The relevant Responsible Officer will make arrangements to ensure the proper conduct of negotiations and the satisfactory recording of the outcomes of negotiations and those outcomes including a recommendation as to who should be awarded the contract will be reported to the relevant Director/City Solicitor & Head of HR/Chief Finance Officer/Corporate Manager and Portfolio Holder.

C3 TENDERS

C3.1 Tendering Process

- C3.1.1 All tenders for a Contract will be, and will expressly be required to be, in compliance with the provisions of this Contract Regulation.
- C3.1.2 Tenders will, if delivered manually, be submitted in a plain sealed envelope or package marked 'Tender' followed by the name of the Contract and bearing no name or mark identifying the tenderer except for a postmark or delivery mark.
- C3.1.3 Tenders, if delivered electronically, will be suitably encrypted to the satisfaction of the Council and in a form compliant with the Council's e-procurement systems.
- C3.1.4 Tenders will be delivered by a specific time on a specified day. Late tenders will only be considered where it is clear that the Tenderer has made every effort to deliver them on time and the Tender opening process has not begun. Late tenders will be returned to the tenderer, unopened, if possible, but in any case will not be opened until after all other tenders have been opened and recorded.
- C3.1.5 Tenders will, if delivered manually, be addressed to an office designated for that purpose as required by the Chief Finance Officer. Electronic Tenders will be forwarded to a secure site in accordance with the requirements detailed in the Council's invitation documents.
- C3.1.6 Tenderers will be informed that the delivery of tenders is their responsibility and that the Council will make no enquiry or allowance for tenders, which are not correctly delivered.
- C3.1.7 All tenders received shall be recorded with the date and time of receipt and entered in either a manual or electronic register kept for this purpose and held in safe custody from the time of receipt to the time of opening.
- C3.1.8 Tenders will not be accepted if:
- priced by reference to other tenders
 - qualified or conditional, by reference to qualifications applied or conditions made by the tenderer, or
 - based on the tenderers own proposals where these are at

variance with the basis on which tenders have been invited

C3.1.9 All tenders received for a Contract shall be opened together at one time in a suitable place and in the presence, as a minimum, of:

- (1) In the case of Contracts for less than £75,000 value the relevant Responsible Officer and
- (2) In the case of Contracts over £75,000 the Portfolio Holder and an Officer designated by the Chief Finance Officer and in both cases details of the Tenders opened will be contemporaneously recorded.

C3.2 Collusion

C3.2.1 Every Contractor will be required to certify, in or with its tender, that in connection with its tender:

- C3.2.2
- it has not colluded with any person with regard to the amount of, or the submission or non-submission of any tender
- C3.2.3
- it is not a member of a cartel or party to any agreement whatever aimed at or having the effect of fixing or controlling prices.

C3.3 Pricing Errors

The tender documents for all tenders which are based on or supported by a Schedule of Rates, Bill of Quantities, or other Pricing Document, will indicate how arithmetical or other errors are to be dealt with.

C3.4 Post Tender Negotiation

C3.4.1 This procedure may be adopted where the Responsible Officer advises that the Council's requirements have become fundamentally different since tenders were invited. It may be adopted only if the Chief Finance Officer advises, in writing, that it is appropriate, in consultation with the appropriate Director/City Solicitor & Head of HR/Chief Finance Officer/Corporate Manager and Portfolio Holder, the reason for the decision being recorded.

C3.4.2 No negotiations will be conducted with any tenderer unless also conducted with all tenderers, which submitted lower or otherwise apparently more suitable tenders.

C3.4.3 Negotiations will be:

- conducted by a minimum of two officers authorised by the relevant Responsible Officer
- fully and contemporaneously recorded, in writing or by other means, the recording being attested by all officers present, and
- the outcome of the negotiations will be reported to the appropriate Responsible Officer

C3.5 Health and Safety

C3.5.1 For all Contracts that are:

- considered High Risk regardless of value
- subject to the Construction (Design and Management) Regulations 2007 (CDM Regulations)

Contractors will be required to provide:

(1) At the earliest reasonable stage in the letting of the contract and no later than the time the tenders are delivered, a copy of the Contractors Health and Safety Policy, unless currently approved by the Council's Health and Safety Adviser

(2) With the Contractor's tender:

- where the CDM Regulations apply, a Statement of Response to the Pre-tender Health and Safety Plan
- In other cases, written proposals as to how the work will be carried out safely.

These documents will be forwarded to the Health and Safety Adviser.

C3.5.2 No Contract will be awarded unless:

- (1) the document referred to in C3.5.1 has been approved by the Health and Safety Adviser or in their absence the Responsible Officer in consultation the Chief Finance Officer, or
- (2) in exceptional circumstances and with their prior agreement, the award is subject to such approval by a predetermined time

C3.6 Withdrawal of Tenders

If a Contractor:

- Withdraws a tender during any period for which it is required to be open for acceptance.
- Does not execute a Contract on being asked to do so following acceptance of its tender
- Has a Contract terminated by the Council because of the Contractor's default.

A report shall be prepared for Executive. The report will, unless an explanation is made which is deemed acceptable to the Council by the

Chief Finance Officer recommend that no further tender be invited from the Contractor for an appropriate period not exceeding three years.

C3.7 Bankruptcy and Liquidation

No tender will be invited from, and no contract entered into with any person who:

- is bankrupt or in liquidation
- has any receiver or administrative receiver appointed to it
- has any winding up order made or (except for the purpose of amalgamation or reconstruction) a resolution of voluntary winding up passed in respect of it
- does not have the financial capacity to carry out the contract

C3.8 Standards

C3.8.1 Goods, materials and workmanship will be specified by reference to any relevant European specification or standard or if there are none to any relevant British specification or standard.

C3.8.2 Goods and materials will not be specified by reference to a particular make, source or process which has the effect of favouring or eliminating particular contractors or suppliers, except when this is unavoidable because of the subject matter of the contract or the absence of relevant specification or standards. When goods and materials are so specified the contract will permit the successful tenderer to propose suitable alternatives.

C3.8.3 All goods and materials will, wherever possible, be sourced from sustainable resources and minimise energy consumption, waste and pollution so as to mitigate the environmental impact of the Contract. Where possible all goods and materials should be evidenced as being from sustainable resources

C4 CONTRACTS

C4.1 Standard Forms of Contract

The following Standard forms of contract shall be used or incorporated

- for contracts for building work the appropriate conditions issued by the Joint Contracts Tribunal or EEC or PPC 2000 or such other contract as deemed appropriate by the Corporate Manager Property.
- for contracts for civil engineering work the ICE conditions of contract or such other standard conditions as may be approved by the Executive
- for contracts for goods, services and IT software the appropriate Council Approved form of Contract.

Amended in each case as may be necessary in accordance with these Contract Regulations, and as advised by the Responsible Officer to their Director/City Solicitor & Head of HR/Corporate Manager and the Chief Finance Officer.

C4.2 Contracts by Deed

C4.2.1 Contracts of Contract Value £75,000 or more will be by deed and under the seal of the Council except with the approval of the City Solicitor & Head of HR.

C4.2.2 A Contract of Contract Value less than £75,000 will be by deed and under the seal of the Council if the City Solicitor & Head of HR so recommends.

C4.3 Contracts in Writing.

C4.3.1 All Contracts (including Contracts placed or confirmed by an order) will be in writing or other approved electronic format and specify:

- the work, service, goods or materials to be supplied
- the price, or the basis for determining the price to be paid
- all discounts or other deductions
- the time or times for performance

C4.3.2 No Contract will provide for payment by the Council in advance of satisfactory performance or delivery unless with the express approval of the Responsible Officer in consultation with the Chief Finance Officer.

C4.4 Execution of Contracts

C4.4.1 The City Solicitor & Head of HR, Chief Legal Executive, **Litigation Solicitor** or in their absence the Chief Executive & Growth Director or the appropriate Director/Chief Finance Officer/Corporate Manager are authorised by the Council to execute, by applying the Council's common seal or by signing, all contracts or other documents duly authorised by or on behalf of the Council.

C4.4.2 Contracts or other documents which are either duly signed by a Responsible Officer or in respect of which the decision so provides may be executed by the relevant Responsible Officer if not by deed or under seal.

C4.4.3 Where any property is to be purchased by the Council at auction the City Solicitor & Head of HR may authorise in writing a person to bid at the auction on the Council's behalf and that person will also be authorised to sign any contract arising for the purchase of the property.

C5 CONTENTS OF CONTRACTS

C5.1 Required contents.

All written Contracts will, subject to the provisions of these Contract Regulations, contain the clauses set out in C5.2-C5.9 inclusive, Clause C5.10 will be included where it is thought T.U.P.E is likely to apply, amended as may be deemed necessary by the

Responsible Officer with the prior approval of the Chief Finance Officer, and will also provide that if the contractor breaks the requirements of the clauses set out in Contract Regulations C5.2, C5.3 or C5.4 the Council may terminate the Contract and recover from the contractor any loss or expense resulting from the termination.

C5.2

Health and Safety

“The Contractor will

- (1) comply with all legislation relating to Health and Safety at Work and all relevant codes of practice or other authoritative guidance and ensure that all the contractor's sub-contractors so comply
- (2) observe and apply the provisions of the Contractor's health and safety policy and any health safety documents and procedures relating to the contract and ensure that all the contractor's sub-contractors do so
- (3) permit the Council's Health and Safety Adviser or other duly authorised representative of the Council:
 - to enter and inspect places where the Contract or work in connection with it is being performed
 - to inspect any vehicle, plant or equipment used in and any document or information relating to the safe performance of the contract.

C5.2.2

If the Health and Safety Adviser is of the opinion that the Contractor is in breach of the requirements of this clause they may inform the Health and Safety Executive”.

C5.3

Assignment and Sub-Contracting

“The Contractor will not transfer, assign or sub-let the whole or any part of the contract or the benefit thereof without the prior written approval of the Council”.

C5.4

Conduct

C5.4.1

“The Contractor will ensure that the conduct of the Contractor's employees towards or in the presence of persons affected by the Contractor's carrying out of the Contract or otherwise coming into contact with the Contractor's employees in the course of their carrying out the Contract is at all times considerate, respectful, in accordance with the requirements of the relevant Council Service, and such as to enhance the image and reputation of the Council. In particular the Contractor will ensure that no employee of the Contractor:-

- harms or exposes to danger any such person
- uses abusive or insulting language or behaviour towards or in the presence of any such person or discriminates against or harasses any such person by reason of or by reference to disability, ethnic origin, age, gender, orientation, language, religion or belief, political or other opinion, national or social origin association with a national minority, locality, property, birth or other status
- displays any pornographic material in the sight of such person
- contravenes the smoking policy in force at any Council premises or sites
- creates avoidable noise or disruption

For the purpose of this clause and the avoidance of doubt the Contractor's employees include the sub-contractors, suppliers and agents of the Contractor and their employees"

C5.5 Equal Treatment

- C5.5.1 "The Contractor will comply with its statutory obligations under the Equality Act 2010 and will adopt a policy to comply with those obligations. Accordingly the Contractor will not treat one group of people less favourably than others because of their protected characteristics in relation to decisions to recruit, train or promote employees.
- C5.5.2 In the event of any finding of unlawful discrimination being made against the Contractor in the three years prior to the Contract or during the Contract by any court or industrial tribunal, or of an adverse finding in any formal investigation over the same period, the Contractor will notify the Council in writing and take appropriate steps to prevent repetition of the unlawful discrimination.
- C5.5.3 The Contractor will set out its policy on equalities
- in instructions to those concerned with recruitment, training and promotion
 - in documents available to employees, recognised trade unions or other representative groups of employees
 - in recruitment advertisements and other literature
- C5.5.4 The Contractor will observe any guidance to employers and others on the elimination of discrimination and the promotion of equality of employment, including steps that can be taken to encourage members of minorities to apply for jobs or take up training opportunities.
- C5.5.5 The Contractor will at the request of the Council supply the Council with details of all steps taken under sub-clause (2), examples of the various instructions and documents referred to in sub-clause (3) and such other information as the Council will reasonably

request for the purpose of assessing the Contractor's compliance with this clause and assisting the Council to demonstrate it has complied with the appropriate legislation and statutory guidance.

C5.5.6 Notwithstanding any other provisions of the Contract the Council shall not be entitled to terminate the Contract by virtue of any breach by the Contractor of this clause”.

C5.6 Corruption

“If the Contractor or any employee or agent of the Contractor has in connection with the award or administration of the Contract or any other Contract between the Council and the contractor:

- directly or indirectly offered, given or agreed to give any bribe, inducement, gift or reward
- committed any offence under the Prevention of Corruption Acts 1889-1916
- given any fee or reward the receipt of which is an offence under S117 Local Government Act 1972, then the Council may terminate the Contract and recover from the Contractor any loss or expense resulting from the termination”

C5.7 Confidentiality

C5.7.1 “Each Party:-

- (a) will treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) will not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

C5.7.2 The contractor will take all necessary precautions to ensure that all Confidential Information obtained from the Council under or in connection with the Contract;-

- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
- (b) is treated as confidential and not disclosed (without prior approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

C5.7.3 The Contractor will not use any confidential Information it receives from the authority otherwise than for the purposes of the Contract

C5.7.4 The provisions of Clauses C5.7.1 to C5.7.2 will not apply to any Confidential Information received by one Party from the other:-

- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party, making the disclosure, including any requirements for disclosure under the FOIA, the Code of Practice on Access to Government Information (2nd Edition) or the Environmental Information Regulations pursuant to Condition [39] (Freedom of Information)

C5.7.5 Nothing in this Condition will prevent the Council

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of the Councils accounts; or
 - (ii) any examination pursuant to Section 6(1) of the national audit Act 1983 of the economy, efficiency and effectiveness with which the Council has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:-
 - (i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information will be entitled to further disclose the confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party

which is not part of any government department or any Contracting Authority; or

- (ii) to any person engaged in providing any services to the Council for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-paragraph (b) the Council discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

C5.7.6 Nothing in this Condition will prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

C5.7.7 In the event that the Contractor fails to comply with this condition¹, the Council reserves the right to terminate the Contract by notice in writing with immediate effect”.

C5.7.8 Freedom of Information

“The Contractor acknowledges that the Council is subject to the requirements of the code of Practice on Access to Government Information (2nd Edition) the FOIA and the Environmental information Regulations and will assist and cooperate with the Council (at the Contractor’s expense) to enable the council to comply with these Information disclosure requirements.

C5.7.9 The contractor will and will procure that its sub-contractors will:

- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within [two] Working Days of receiving a Request for Information;
- (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within [five] working Days (or such other period as the Council may specify) of the Council requesting that information; and
- (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

C5.7.10 The council will be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information (2nd Edition) the FOIA or the Environmental Information Regulations;
- (b) is to be disclosed in response to a Request for Information, and in no event will the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Council.

C5.7.11 The Contractor acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged under the Code of Practice on Access to Government Information (2nd Edition) the FOIA, or the Environmental Information Regulations to disclose Information:-

- (a) without consulting with the Contractor, or
- (b) following consultation with the Contractor and having taken its views into account.

C5.7.12 The Contractor will ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and will permit the Council to inspect such records as requested from time to time.

C5.7.13 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Council may nevertheless be obliged to disclose Confidential Information in accordance with Clause C5.7.11".

DEFINITIONS (RELATING TO C5.7 ONLY)

“Commercially Sensitive Information” means the subset of Confidential Information listed in schedule [] comprised of information:

- (a) which is provided by the Contractor to the Council in confidence for the period set out in that schedule; and./or
- (b) that constitutes a trade secret;

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, [Goods/Services], developments, trade secrets, Intellectual Property Rights, know-

how, personnel, customers and suppliers of either party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information;

“Contracting Authority”

means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 ;

“Environmental Information Regulations”

means the Environmental Information Regulations 2004;

“FOIA”

means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

“Information”

has the meaning given under section 84 of the Freedom of Information Act 2000;

“Requests for Information”

have the meaning set out in FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations or the Code of Practice on Access to Government Information (2nd Edition).

C5.8

Ombudsman

C5.8.1

“In connection with any investigation by The Commission for Local Administration in England (Local Government Ombudsman) under part III of the Local Government Act 1974 the Contractor will fully co-operate with all requests made by the Ombudsman, including requests to view documents or premises or to interview the Contractor’s employees.

C5.8.2

In the event of:

- (1) The Ombudsman reporting that injustice has been caused to a person aggrieved in consequence of maladministration, and
- (2) such maladministration having been caused or contributed to by the act or omission of the Contractor and
- (3) the Council deciding on having such report laid before it to make a payment or provide some other benefit to such person;

The contractor will,

- reimburse the Council the amount of such payment
- pay to the Council the reasonable cost of such benefit, as the case may be and the Council may deduct any such sums from any payment otherwise due under the contract”.

- C5.9 Sustainability
- C5.9.1 “The Council requires that in carrying out this Contract the Contractor will perform an assessment of the likely environmental impact that could result. In performing this assessment the Contractor must demonstrate compliance with the Council’s sustainable purchasing policy and all relevant environmental legislation.
- C5.9.2 The Council expects that as a result of the assessment the Contractor will use their best endeavours to ensure they minimise any potential environmental impact by the use of appropriate sustainable policies”
- C5.9.3 In the event of any prosecution for non-compliance with environmental legislation by the Contractor during the contract period the Contractor will notify the Council in writing demonstrating the actions it has taken to prevent a repetition of non-compliance.
- C5.9.4 If the Chief Finance Officer is of the opinion that the Contractor is in breach of the requirements of this clause they:
- a) will notify the Contractor and the Contract Administrator forthwith giving particulars of the breach
 - b) may present a report on the breach to the appropriate Director/City Solicitor & Head of HR/Corporate Manager, Portfolio Holder, Scrutiny Committee or Executive with such a recommendation as they consider appropriate.”
- C5.10 Workforce Matters
- C5.10.1 “Application of TUPE
- C5.10.1.1 The Council and the Contractor agree that where the identity of a provider (including the Council) of any service which constitutes or which will constitute one of the Services is changed pursuant to this Agreement (including upon termination of this Agreement) then the change will constitute a Relevant Transfer.
- C5.10.1.2 On the occasion of each Relevant Transfer except a Relevant Transfer upon termination of this Agreement, the Contractor will and will procure that any new Contractor of the relevant service shall comply with all of its obligations under the Regulations and the Directive in respect of the Relevant Employees.
- C5.10.2 Emoluments and Outgoings
- C5.10.2.1 The Council will be responsible for or will procure that any other employer of a Relevant Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national

insurance contributions, pension contributions and otherwise, up to the date of the Relevant Transfer.

C5.10.2.2 The Contractor will be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of the Relevant Transfer.

C5.10.3 Pensions

The Contractor will ensure that all Transferring Employees and/or Transferring Original Employees are offered membership of the pension scheme of which they were, or were eligible to be, members prior to the Transfer Date or are afforded pension rights which are certified by the Government Actuary Department [or by a professionally qualified actuary] as being broadly comparable to the terms of the pension scheme of which they were, or were eligible to be, members prior to the Transfer Date.

C5.10.4 Provision of Information

The Council warrants that the information set out in Schedule [•] relating to the [Relevant] [Transferring] Employees is accurate and complete as at the date of this Agreement and undertakes to advise the Contractor on a monthly basis up to the Transfer Date of any changes to the information provided.

C5.10.5 Contractor to Inform Council of any Measures

The Contractor will within 10 working days of receiving a request from the Council, furnish to the Council any information deemed by the Council necessary concerning any measures (within the meaning of the Regulations and the Directive) that the Contractor intends to take in relation to any Relevant Employee and shall indemnify the Council against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this obligation.

C5.10.6 Indemnities

C5.10.6.1 The Council will shall indemnify the Contractor from and against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses), which the Contractor will take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Council in relation to any Relevant Employee prior to the date of the Relevant Transfer and any such claim is not in connection with the Relevant Transfer.

C5.10.6.2 The Contractor will indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses), which the Council will

take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of or termination of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Contractor in relation to any Relevant Employee, on or after the date of the Relevant Transfer.

C5.10.6.3 The Contractor will indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council will take all reasonable steps to mitigate, in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor to comply with any legal obligation to such trade union, staff associated or other employee representative whether under Regulation 10 of the Regulations, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.

C5.10.6.4 The Contractor will indemnify the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Authority will take all reasonable steps to mitigate, in connection with or as a result of any claim by any Relevant Employee that the identity of the Contractor or Sub-Contractor is to that Relevant Employee's detriment or that the terms and conditions to be provided by the Contractor or any Sub-Contractor or any proposed measures of the Contractor or any Sub-Contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

C5.10.7 Handover on termination

C5.10.7.1 During the 12 months preceding the expiry of this Agreement or after the Council has given notice to terminate this Agreement or at any other time as directed by the Authority, and within 15 working days of being so requested by the Authority, the Contractor will fully and accurately disclose to the Authority any and all information in relation to all personnel engaged in providing the Services including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Council may request, in particular but not necessarily restricted to any of the following:

- (a) a list of employees employed by the Contractor;
- (b) a list of agency workers, agents and independent contractors engaged by the Contractor ;
- (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
- (d) the terms and conditions of employment of the Relevant

Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.

C5.10.7.2 The Contractor will warrant the accuracy of all the information provided to the Council pursuant to clause C5.10.7.1 and authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

C5.10.7.3 During the 12 months preceding the expiry of this Agreement or where notice to terminate this Agreement for whatever reason has been given, the Contractor will allow the Council or such other persons as may be authorised by the Council to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Council may reasonably request.

C5.10.7.4 During the 12 months preceding the expiry of this Agreement or where notice to terminate this Agreement for whatever reason has been given, the Contractor will not without the prior written consent of the Council unless bona fide in the ordinary course of business:

- (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- (b) [materially] increase or decrease the number of employees employed in connection with the Services; or
- (c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

C5.10.8 Indemnities

The Contractor will indemnify the Council and any new contractor appointed by the Council and keep the Council and any new contractor appointed by the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Council and any new contractor appointed by the Council will take all reasonable steps to mitigate, awarded against or incurred or paid by the Council or any new contractor appointed by the Council as a result of or in connection with the employment or termination of employment of any employee of the Contractor during any period prior to the date of expiry or termination of this Agreement.

C5.10.9 Sub-contractors

In the event that the Contractor enters into any sub-contract in connection with this Agreement, it shall impose obligations on its

Sub-Contractor in the same terms as those imposed on it pursuant to Clauses C5.10.7 to C5.10.9 and will procure that the Sub-Contractor complies with such terms. The Contractor will indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.”

DEFINITIONS (Relating to C5.10 only)

“Relevant Transfer”	means a relevant transfer for the purposes of the Regulations;
“Services”	means [the whole of the services or any of them to be provided by the contractor pursuant to this agreement or such of them as may from time to time remain the subject of this agreement];
“Sub-Contractor”	means a person to whom the contractor sub-contracts any of its obligations under this agreement
“Transfer Date”	means the date the Transferring Employees are transferred to the employment of the Contractor and the date that the Transferring Original Employees are transferred to the employment of a subsequent contractor;
"Transferring Employee"	means an employee of the Council whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out this contract between the Council and the Contractor, a contract of employment with someone other than the Council;
“Transferring Original Employee”	<p>means an Original Employee</p> <p>(a) whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out a contract between the Council and the Contractor, a contract of employment with someone other than his existing employer, and</p> <p>(b) whose contract of employment on each occasion when an Intervening Contract was carried out became, by virtue of the application of the Regulations in relation to what was done for the purposes of carrying out the Intervening Contract, a contract of employment with someone other than his existing employer.</p>

SCHEDULE

1. DEFINITION AND INTERPRETATION

In these contract orders the following words will have the meaning given to them below:

Approved List	-	the list of building and civil engineering contractors maintained by the Chief Finance Officer
Construction Contract	-	a Contract for building or civil engineering related work of a kind where there is an appropriate panel on the Approved List
Contract	-	except where the context required a different meaning a contract for the purchase or hire by the Council of work, goods or services
Contract Administrator	-	the person named in the Contract who has responsibility for managing that Contract
Contract Regulations	-	these Contract Regulations for contacts
Contract Value	-	the estimated total of the monetary payments to be made by or to the Council and the value or other benefits to be retrieved, enjoyed or paid by the contractor
	-	is exclusive of VAT
Contractor Criteria	-	includes a tenderer or prospective tenderer
	-	the criteria for selecting contractors, awarding contracts or for inclusion in a Standing List in accordance with Contract Regulations 2.0
EU Thresholds	-	the relevant thresholds over which a contact needs to Comply with the European Public Procurement Regime
High Risk Work		work involving or including demolition, asbestos removal or treatment or work at height such as scaffolding or window cleaning or where a risk assessment has demonstrated that the contract has an inherent high risk factor.
Nomination	-	the naming and by implication recommendation of a sub contractor or supplier.
Contravention	-	the deliberate or accidental avoidance of part or all of the requirements imposed by the Contract Regulation.

Procurement Strategy -	the Council's strategy document that details its approach to procurement
Exemption -	The waiving of part or all of the requirements of a Contract Regulation.
Public Procurement - Legislation	regulations relating to Public Procurement
Responsible Officer -	the Director/City Solicitor & Head of HR/Chief Finance Officer/Corporate Manager or other officer nominated by the Responsible Officer
Sustainability -	Means that contracts should be carried out in a way that minimises the impact on the local and global environment, supports the local economy and benefits society.

2. REFERENCES

Any reference in these orders to any Act of Parliament or Statutory Guidance will include a reference to any statute for the time-being in force replacing or re-enacting that Act.