

STANDING ORDERS



**PART 3: TENDER AND CONTRACT PROCEDURE
RULES**

JULY 2010

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TENDER AND CONTRACT PROCEDURE RULES

1 STATUS OF THE TENDER AND CONTRACT PROCEDURE RULES

1.1 Introduction

- 1.1.1** The Tender and Contract Procedure Rules of the Company form part of Standing Orders and translate into practical guidance the Company's broad policies relating to financial, management and contractual control. The Articles of the Company, the Terms of Reference of the Board and its Committees, as well as the Standing Orders, outline how the Company will be controlled and run.
- 1.1.2** These Tender and Contract Procedure Rules are adapted from the Joint Local Government Task Force / CIPFA publication Contract Procedure Rules recommended for public authorities. They demonstrate best practice in the public sector whilst also enabling Nottingham City Homes to procure and contract its business professionally as a private Company.
- 1.1.3** The Company will operate to high business standards, adopt best practice and abide by its Tender and Contract and Procedure Rules at all times. The proper conduct of the financial and contractual affairs of an organisation is of paramount importance.
- 1.1.4** The management of the financial and contractual affairs of Nottingham City Homes will be amongst the most important activities a manager will undertake in order to comply with legal requirements, principles of good corporate governance and to ensure that all decisions with a material financial impact are made in a rational way, according to due process, and can be demonstrated as such.
- 1.1.5** All staff and Board Members are reminded that the highest standards of probity are expected at all times and attention is particularly drawn towards the Company's Anti Fraud and Corruption Framework and the requirement to complete the Gifts and Hospitality Register made to, or declined by, the Company, any of its employees or Board Members.
- 1.1.6** All staff and Board Members have a duty to take reasonable action to ensure that the use of resources within the Company is legal, properly authorised, in the best interests of the Company and delivers Value for Money for the Company and its customers.
- 1.1.7** The Tender and Contract Procedure Rules shall be read in conjunction with the Company's Standing Orders which apply to every Board Member,

1.2 Definitions

For the purposes of the Tender and Contract Procedure Rules, unless stated to the contrary, the terms below shall have the following meanings:

- 1.2.1 **“The Company”** refers to Nottingham City Homes Limited, registered Company number 05292636;
- 1.2.2 **“Board”** means the Board of Nottingham City Homes Limited or any other formally constituted Member body operating within the terms of its reference (e.g. a Committee of the Board);
- 1.2.3 **“Member”** means a duly appointed member of the Board of Nottingham City Homes Limited.
- 1.2.4 **“Executive Director”** means an employee of Nottingham City Homes Limited holding a post designated as a director.
- 1.2.5 **“Company Secretary”** means an Executive Director designated by the Board in accordance with the Companies Act 1985 (and as subsequently amended), or a senior member of the management team to whom duties are delegated in accordance with the Company’s Scheme of Delegation.
- 1.2.6 **“The City Council”** refers to Nottingham City Council.
- 1.2.7 **“The Scheme of Delegation”** sets out the powers reserved by the Board and those delegated to others (including Board sub-committees and the Chief Executive) and is included in the Company’s Standing Orders Part 1: Governance.
- 1.2.8 **“The Rules”** refers to this document, the Company’s Tender and Contract Procedure Rules, which form part of the Company’s Standing Orders.
- 1.2.9 **“The RO”** refers to the responsible officer who is nominated by the respective Executive Director to lead on a specific procurement project or purchase – liaising with the procurement as required.
- 1.2.10 **“Contract”** refers to a legally binding formal agreement with specific terms between two or more parties (person or entities) for performing, or refraining from performing, some specified act(s) in exchange for valuable benefit known as lawful consideration.

1.3 Responsibilities

- 1.3.1** The Board will hold Directors accountable for any decisions they make under the Scheme of Delegation or under the Rules.
- 1.3.2** The Board is responsible for promotion of Value for Money and sensible use of resources and has the power to direct and authorise all expenditure on procurement of goods, services and works. For practical reasons, some of these specific responsibilities have been delegated.
- 1.3.3** The Company's Head of Procurement and their team provide a centralised procurement service for the Company and are to be consulted on all purchasing and contracting matters. In most cases the Procurement Team shall handle the whole procurement process.
- 1.3.4** The Director, acting on the Head of Procurement's advice, has responsibility for all contracts tendered and entered into by his/her department. He/she is accountable to the Board for the performance of his/her duties in relation to contract award and management and which shall include:
- (a) Compliance with EU and UK legislation;
 - (b) Compliance with Section 20 of the Landlord and Tenant Act 1985(As amended by Section 151 of the Commonhold & Leasehold Reform Act 2002);
 - (c) Compliance with Standing Orders (includes the Company's Financial Regulations), Customer Care Policies, other Company policies and with any Codes of Practice or guidance issued in respect of the Rules;
 - (d) Ensuring Value for Money in all procurement matters;
 - (e) Ensuring that any third party supervising a Nottingham City Homes contract, or delegated City Council contract agrees in writing to comply with the Rules as if they were an officer of the Company;
 - (f) Ensuring that all legislation and Company policies relating to Equalities and Diversity are complied with at all times;
 - (g) Ensuring that adequate Contract Files are securely kept for all contracts to include proper records of all contracts, tenders and orders; minutes of tender evaluation panels and all other meetings and records of any waivers of the Rules;
 - (h) Ensuring that all the Responsible Officers (ROs) in his/her department receive appropriate training and comply with the Rules;
 - (i) Accepting or authorising acceptance of tenders in accordance with Section 9 of the Scheme of Delegation;
 - (j) Ensuring the Tender and Quotations Register is up to date in respect of his/her department;
 - (k) Ensuring the Register of Dispensations is up to date in respect of his/her department;

- (l) Making of appropriate arrangements for the opening of all tenders and their secure retention so as to protect the integrity of the tendering procedure;
- (m) Ensuring that the Contracts are signed or sealed in accordance with the Rules;
- (n) Compiling and maintaining a scheme of delegation specific to their department, detailing the names and grades of staff approved for the purposes of price-testing, tendering, entering into contracts and placing orders on behalf of Nottingham City Homes and the maximum contract value allocated to each member of staff for these purposes;
- (o) Agreeing with and supplying to the Director of Finance, ICT and Governance, his/her authorities schedule before the start of each financial year, and on making any amendment;
- (p) Maintaining Departmental Instructions which have been approved by the Director of Finance, ICT and Governance;
- (q) Informing the Director of Finance, ICT and Governance and the Head of Procurement of his/her department's proposed procurement activity for the forthcoming financial year, 3 months before the start of that financial year;
- (r) For the Head of Procurement ensuring that the Prior Information Notice is sent to OJEU as soon as possible after the Company has determined to proceed with the procurement activity. This will normally be at the beginning of the relevant financial year;
- (s) Notifying the Director of Finance, ICT and Governance suitably in advance of a procurement process being commenced to enable the Director of Finance, ICT and Governance to assist with the procurement process, if necessary;
- (t) Providing written notification to the Director of Finance, ICT and Governance of the details of all contracts or engagements entered into by his/her department as soon as practicable after execution with a reference of the authority for the contract or engagement;
- (u) For the Director of Finance, ICT and Governance keeping a register of all schedules of authority;
- (v) For the Company Secretary maintaining a central Tender and Quotations Register;
- (w) Ensuring health & safety is properly and effectively managed in all procurement matters; and
- (x) Ensuring that no contract is entered into unless sufficient provision exists in the appropriate capital or revenue budget.

1.3.5 Responsible officers shall:

- (a) Comply with the Rules and ensure that his/her behaviour is not or not perceived as being anti-competitive;
- (b) Ensure that Value for Money is obtained and secured at all times;
- (c) Liaise with and seek advice from the Head of Procurement, including on whether a suitable City Council Corporate Contract already exists before seeking to let another contract and if so seek the Director's instructions as

- (d) Show no undue favour to any contractor or supplier, nor discriminate against contractors or suppliers from other EU states (EU Treaty and Procurement Rules);
- (e) Conduct tendering and price-testing in accordance with the highest standards of propriety and proper practice (including respecting the confidentiality of commercial information);
- (f) Do nothing that contravenes EU or UK law;
- (g) Ensure that adequate and secure Contract Files are kept for all contracts upon which they are engaged, with key original contract documentation being retained by the Governance team;
- (h) Ensure that a clear audit trail of evidence is kept to support tendering and contracts decisions made. A written record must be kept of each stage of the contracting process;
- (i) Ensure that the health & safety issues are fully considered and risk assessed in all procurement issues; and
- (j) Ensure that tenant and leaseholder consultation is always carried out in accordance with legislation and the Company's policies and in particular, where leaseholder consultation is required under Section 20 of the Landlord and Tenant Act 1985 (as amended by Section 151 of the Commonhold & Leasehold Reform Act 2002) it is correctly carried out.

1.4 Amendments to the Tender & Contract Procedure Rules

- 1.4.1** The Board is responsible for approving revisions to the Rules following recommendations to that effect received from the Finance and Audit Committee.
- 1.4.2** The Finance and Audit Committee shall approve minor amendments and additions to the Rules as recommended by the Director of Finance, ICT and Governance.
- 1.4.3** The Director of Finance, ICT and Governance will inform all staff of changes to the Rules and agree training requirements with Executive Directors as required.

1.5 Dispensations to the Tender & Contract Procedure Rules

- 1.5.1** There will be no dispensations from the Rules except where one of the circumstances set out in the paragraphs below arises and the respective actions required are completed.
- 1.5.2 Emergency Action** – in the event of an emergency or as a result of a disaster the Chief Executive, or an Executive Director, are empowered to

7.6 (Emergencies and Disasters).

1.5.3 Operational Issues – where an Executive Director considers that there are justifiable reasons for dispensing the Rules, they may seek authority to waive the Rules in accordance with the following process:

- Production of a report setting out the case for the dispensation, including the financial consequences of the course of action proposed;
- Approval from both the Chief Executive and Director of Finance, ICT and Governance for the proposed course of action; and
- Authorisation from the Chair of the Finance and Audit Committee.

1.5.4 Specialist providers – subject to the rules in sections 2.4 (European Union) and 7.4. (Leaseholder Consultation), where an Executive Director has decided to procure or obtain categories of work, goods, materials or services of a type which are carried out or provided only by specialist persons (of whom there are so few that it may not be possible to obtain the specified number of quotations) they may seek authority to waive the Rules in accordance with the process outlined in Rule 1.5.3.

1.5.5 APPENDIX 4 – Authority for Dispensation, includes a template report and authorisation form which shall be completed for all proposed dispensations to ensure that the required process is followed, documented and evidenced.

1.5.6 The reports and signature sheet for each dispensation shall be provided to the Company Secretary, held in the Register of Dispensations and reported to the next meeting of the Finance and Audit Committee. The Finance and Audit Committee will review the Register of Dispensations annually.

1.6 Breaches of the Tender & Contract Procedure Rules

1.6.1 It is a disciplinary offence to breach the Rules. Any such breaches of the Rules, whether inadvertent or otherwise, must be brought to the attention of the Director of Finance, ICT and Governance who will investigate the circumstances with the staff and managers concerned.

1.6.2 The Director of Finance, ICT and Governance shall report all breaches to the Finance and Audit Committee, and the Board where necessary, together with any remedial action being undertaken as a consequence.

2 INTERPRETATION AND APPLICATION

2.1 Guiding Principles and Nature of Rules

2.1.1 Every contract made by Nottingham City Homes or on its behalf shall comply with these Rules as well as:

- The EU Treaty and all relevant EU and UK legislation;
- The Company's Standing Orders (SOs include the Company's Financial Regulations);
- Departmental Instructions;
- The Asset Management Strategy;
- The Procurement Strategy;
- Procurement Codes of Practice; and
- Relevant Nottingham City Homes' and Council policies.

2.1.2 This applies to contracts for the provision of works, services or goods both to and by the Company.

2.1.3 It shall be a condition of any contract between the Company and anyone who is not an officer of the Company, but who is authorised to carry out any of the Company's contracts functions or supervise a contract, that they comply with these Rules and the Financial Regulations of the Company as if they were an officer of the Company.

2.1.4 The guiding principle for the operation of these Rules is that there must be competition for any contract, unless these Rules otherwise permit, particularly with regard to any action taken under the rules in sections **4.2** (Choosing the Tendering Method) and **4.4** (Number of Tenders).

2.1.5 This guiding principle can only be waived in exceptional circumstances in accordance with the procedures set out in the Scheme of Delegation and these Rules.

2.1.6 Every Responsible Officer (RO) shall ensure that no political or other irrelevant considerations as defined by section 17 of the Local Government Act 1988 are introduced into the procurement process except for those matters concerned with the terms and conditions of employment of a contractor's workforce and the conduct of contractors or their workers in industrial disputes. This must be only so far as necessary or expedient to permit or facilitate compliance with the best value requirements of Part I of the Local Government Act 1999; or where there is a transfer of staff to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 may apply.

2.2 Preliminaries and Estimates

- 2.2.1** No tender shall be invited or contract entered into without either authority to do so either under delegated authority under the Scheme of Delegation or express authority from the Board, or the appropriate Committee following the submission of a report for this purpose.
- 2.2.2** A note of the authority obtained or delegated authority relied on must be kept in or noted in the Contract File.
- 2.2.3** A tender must not be invited nor any orders placed unless:
- Appropriate provision for the expenditure has been included in the approved budgets for the year in which it is to be incurred or;
 - Appropriate provision for the expenditure has been included in estimates approved in draft for the next financial year where expenditure is to be incurred in that year; or
 - Alternative financial provision is made by Nottingham City Homes under the Financial Regulations.
- 2.2.4** A tender must not be invited unless an estimate of the probable costs has been prepared by the Director as required by Financial Regulations. This estimate must be recorded for audit purposes in the Contract File.
- 2.2.5** An estimate must not be prepared by the Director more than three months before the start of the tendering process unless the Director is satisfied that (subject to any percentage increase or decrease that may be appropriate to reflect increases or decreases in inflation costs) an estimate prepared earlier than this date remains accurate.
- 2.2.6** A Director must take reasonable steps to verify the accuracy or validity of their own estimate. If this involves obtaining external verification by inviting one or more persons to submit an estimate of the cost of work, goods, materials or services, it must be made clear to the contractor that this is not a tender and cannot be accepted as such.
- 2.2.7** The tender evaluation framework must be completed prior to the invitation to tender.
- 2.2.8** In respect of the purchase of goods, materials and supplies any Director acting under delegated powers must have regard to any advice issued by the Company Secretary or the Head of Procurement and as appropriate must consult with the Director of Finance, ICT and Governance to ensure the best possible Value for Money is obtained from all purchases made.
- 2.2.9** Confidentiality - All matters relating to tenders and contracts must be dealt with in confidence and any discussions or correspondence must be

- 2.2.10** Disclosure of tenderers' names - The names of contractors on the list of tenderers for a particular contract may not be divulged at any time, except for Section 20 purposes, unless in exceptional circumstances and only with the specific agreement of the relevant Director and the Director of Finance, ICT and Governance. These exceptional circumstances might include those occasions when it is appropriate to hold open days or presentations to provide more information to and take preliminary questions from those contractors who have expressed an interest in bidding.
- 2.2.11** No tenderer shall be given any information about the success of its tender until after the award of contract, subject to the requirements of Section 20 of the Landlord and Tenant Act 1985 (as amended by Section 151 of the Commonhold & Leasehold Reform Act 2002).

2.3 Contract Value and Aggregation

- 2.3.1** Subject to the EU Rules, the aggregate value of any contract is to be calculated on the basis of the total value of the consideration estimated to be payable by Nottingham City Homes over the entire contract period including any options to extend the contract and not as an annual value.
- 2.3.2** Particular care needs to be taken, since a whole company view is required. Hence, what staff might consider to be an unrelated contract, but comprising the same works or supply, would be deemed under the EU Rules to be a parts of the whole and hence subject to aggregation for the purposes of the EU threshold values.
- 2.3.3** Unless otherwise specifically provided where a value or estimated value is given in these Rules it means the aggregate value payable in pounds sterling exclusive of Value Added Tax.
- 2.3.4** The RO shall not artificially under or over estimate or divide any contract ordinarily treated as a single contract into two or more contracts in order to avoid the application of these Rules or EU Rules.
- 2.3.5** Contracts shall be packaged to best ensure service delivery, competition and Value for Money.

2.4 European Union

- 2.4.1** If these Rules are affected by any Directive issued by the European Economic Union the provisions of the Directive will override or be read in conjunction with these Rules.
- 2.4.2** In relation to every proposed contract, consideration shall be given to the question whether or not the value of the contract is equal to or exceeds the relevant threshold set by the EU Directives and published from time to time in the European Journal of the European Union.
- 2.4.3** EU Directives thresholds are contained in APPENDIX 2 – EU Thresholds and Categories of Services. EU Thresholds change every 2 years in January in even years.
- 2.4.4** In the event of any conflict between EU law, UK law and these Rules, EU law shall prevail over UK law and UK law shall prevail over these Rules.
- 2.4.5** The EU Rules relate to four areas:
- Goods (including the purchase or hire or leases) of any supplies (Public Supply Contracts Regulations 1995 (SI No 201));
 - Works (including new construction and maintenance contracts (Public Works Contracts Regulations 1991 (SI No 2680)) as amended by the Public Supply Contracts Regulations 1995 (SI No. 201));
 - Services, where different rules apply to different services (Public Services Contracts Regulations 1993 (SI No 3228 as amended). The full EU Services regime applies to all those services Categorised as “Priority Services” (“Part A”) and a lesser services regime applies to those services categorised as “Residual Services” (“Part B”). Details of the services in each category are listed in Appendix 2; and
 - Utilities. It is most unlikely that any activities will constitute a Utility procurement.

2.5 Application of the Rules (Where these Rules Apply)

- 2.5.1** Unless otherwise expressly stated in Rule **2.5.8** or unless a dispensation has been obtained, as per the requirements of the rules in section **1.5**, the Rules always apply:
- Where the Company enters into any agreement, written or otherwise, with another person for the provision of supplies, services or works to or by the Company; and
 - To any procurement activity including purchases, contracts, hiring, renting, leasing or concession.

- 2.5.2** The sale or acquisition of land must be carried out in accordance with the Company's Standing Orders, notably the Scheme of Delegation and Financial Regulations, as well as any procedures issued by the Director of Finance, ICT and Governance.
- 2.5.3** Income Generation - If a contract involves generating income, the contract may have additional value to the successful contractor. The RO must make an estimate of the value of the contract (taking into account the possible income) and apply these Rules if the value is deemed to be £10,000 and over
- 2.5.4** All contracts to which these Rules apply must be let following a competitive tendering process in accordance with the procedures set out in the Rules and any guidelines or Codes of Practice issued from time to time under these Rules unless the contract is listed and/or a dispensation has been obtained as per the requirements of the rules in section **1.5**.
- 2.5.5** Contract Extensions - Where a contract does not have any provision for an extension, one extension may exceptionally be agreed for a maximum period of one year, subject to the submission of a business case approved by the Chief Executive in consultation with the Chair of the Board. In such cases similar contract terms and conditions will apply. Particular care must be taken that EU aggregation rules are not breached through any such action.
- 2.5.6** Where a contract does provide for an extension, these extensions may be enacted where the authority to enter into the contract specifically allowed the extension to be enacted. Where no such authority has been given, prior approval of the Board must be obtained. Extensions of contracts must not be for more than 2 years in total.
- 2.5.7** If a contract has already been extended in accordance with Rule **2.5.5**, no further extensions will be allowed unless approved by the Board following a written report to the Board seeking permission to extend the contract and waive these Rules.
- 2.5.8** These Rules do not apply to:
- Contracts of employment; or
 - Contracts for the sale or acquisition of land.
- 2.5.9** Separate rules or policies may apply to specific contracts and for which provision may be made either under the Authorities Schedule or particular rules or procedures.

- 2.5.10** The rules regarding the capacity of the Chief Executive, or other Executive Director, to waive the Standing Orders and obtain a dispensation are set out in section 1.5.
- 2.5.11** No waivers may be granted from the Scheme of Delegation or which would result in a breach of EU or UK law.

3 EXPENDITURE LEVELS AND FORMAL REQUIREMENTS

3.1 Contracts & Expenditure Valued Below £10,000

- 3.1.1** Where a corporate or departmental contract does not exist, a contract shall be made where the following requirements are satisfied in accordance with the respective estimated values:
- Less than £500. No competitive quotations are required subject to Rule **3.1.3**;
 - £500 or more but less than £5,000. At least 3 written quotations must be sort and at least 2 obtained;
 - £5,000 or more but less than £10,000. At least 4 written quotations must be sort and at least 3 obtained.
- 3.1.2** Where a corporate or departmental contract already exists an order shall be placed in accordance with that existing contract.
- 3.1.3** Rule **3.1.1** that ROs do not have to obtain quotes where expenditure is below £500 does not negate the RO's responsibility to ensure that Value for Money is secured and obtained, without exception, in relation to the commitment and disbursement of Company funds.
- 3.1.4** Quotations shall be obtained based on estimated expenditure. If quotes received are above the original threshold followed then ROs shall request and obtain additional quotes to ensure compliance with Rule **3.1.1**.
- 3.1.5** Quotes must only be requested and, more importantly, commitments made with suppliers and/or orders raised where sufficient budget provision, agreed with the respective budget holder, is in place to fund the proposed expenditure.
- 3.1.6** In all cases quotations shall be obtained before a purchase order is raised and/or any other commitment is made by an RO on behalf of the Company to purchase goods or services.
- 3.1.7** For any goods and services costing £500 or more, written quotations are required and a Note for Retention must be completed and provided to the Procurement Team (see APPENDIX 5 – Quotations for estimated expenditure between £500 and £10,000 – Note for Retention).
- 3.1.8** All quotes obtained shall subsequently be recorded in the Company's Tender and Quotations Register maintained by the Governance Team.
- 3.1.9** In all cases the RO shall record, in the Contract File, with a copy to the Procurement Team, the names of the contractors or suppliers

approached, their responses (including willingness to quote), details of any quotations provided, the subject matter of the quotation, the name of the contractor quoting, the date and time of the quote, the price offered and other relevant trading terms, the name of the RO processing the quotation, the name of the contractor offering the most favourable quotation and the reasons why that quotation was accepted. See APPENDIX 5 – Quotations for estimated expenditure between £500 and £10,000 – Note for Retention.

- 3.1.10** All contracts valued at less than £10,000 must still comply with rules set out in section **7.4** (Leaseholder Consultation).

3.2 Contracts & Expenditure Valued Above £10,000

- 3.2.1** Where a corporate or departmental contract does not exist and the estimated value of the contract is more than, or equal to, £10,000 a formal tendering process, undertaken via the Company's Procurement Team, shall be undertaken in accordance with the Rules – notably Part **4** (TENDERING PROCESS).
- 3.2.2** The number of tenders required to be requested and obtained is dictated by the estimated value of the contract and the related expenditure as per the levels set out in Rule **4.4.1**.
- 3.2.3** All contracts valued at £10,000 or above (including those above EU limits) must still comply with rules set out in section **7.4** (Leaseholder Consultation).

3.3 Expenditure & Contracts Valued Above EU Thresholds

- 3.3.1** Where a corporate or departmental contract does not exist and the estimated value of the contract is in excess of the thresholds contained within European Economic Union Directives (see APPENDIX 2 – EU Thresholds and Categories of Services) a formal tendering process, undertaken via the Company's Procurement Team, shall be undertaken in accordance with the provisions of the Directive(s).
- 3.3.2** The number of tenders required where contract values are estimated in excess of EU thresholds as per the levels set out in Rule **4.4.1**. Further information on EU Directives is provided in section **2.4**.

4 TENDERING PROCESS

4.1 Contracts Not Requiring Formal Tendering

4.1.1 Where a contract has an estimated value of less than £10,000 the responsible Director, in consultation with the Company's Head of Procurement, may decide that formal tendering is not appropriate and that they are satisfied that compliance with section **3.1** is sufficient.

4.1.2 The decision and the process used must always demonstrate Value for Money and, in the absence of a Contract File being created, the respective details shall be fully documented and provided to Governance for inclusion in the Tender and Quotations Register (see further information and requirements in section **4.18**).

4.1.3 The following contracts also need not be tendered:

- Contracts for which a dispensation from tendering has been granted as per the requirements of the rules in section **1.5**;
- Contracts formalising the funding of particular voluntary sector bodies, where the purpose of the contract is to establish the general conditions whereby the body may be funded by the Company;
- Orders placed under a corporate contract arranged by either the Council's central procurement unit or by Nottingham City Homes;
- Orders placed with such consortia as may be approved by the Head of Procurement provided they are satisfied that the purchasing requirements comply with EU and UK law and provide Value for Money;
- Provided that all such contracts referred to above are effected in compliance with the Financial Regulations and all appropriate internal controls; and
- All contracts which are not required to be tendered must still comply with the rules in sections **7.4** and **7.5**.

4.1.4 All contracts or anticipated commitments of expenditure equal to or in excess of £10,000 shall be tendered.

4.2 Choosing the Tendering Method

4.2.1 Before considering which tendering method to use in consultation with the Procurement Team the Director and RO must identify whether the EU Rules apply and if they do then the tendering must comply with the EU Rules and these Rules, with the EU Rules taking precedence. If the EU Rules do not apply then the tendering must comply with these Rules. See

APPENDIX 2 – EU Thresholds and Categories of Services, to ascertain if the EU Rules apply.

4.2.2 The Director or RO must also consider whether Section 20 of the Landlord and Tenant Act applies and if they do then the tendering must comply with this – see the rules in section 7.4.

4.2.3 The tendering methods available to obtain prices for contracts are as set out below:

- Open Tendering (see section 4.5);
- Restricted Tendering (see section 4.6);
- Negotiated Procedure (see section 4.7);
- Schedule of Rates (see section 4.8); and
- Framework Agreements (such as OGC – see section 6.2)

4.2.4 All methods of tendering shall be evaluated by the Director and RO in consultation with the Procurement Team. The ultimate decision as to which method is selected shall rest with the Head of Procurement.

4.2.5 Where a method of tendering other than ‘open tendering’ is chosen, a risk assessment must be completed in consultation with the Director of Finance, ICT and Governance as necessary. This will identify the potential risks involved in the contract, which ones are the responsibility of the contractors/consultants and which are those of the Company, the likelihood of occurrence and impact on the Company of each risk and how the risks can be minimised and managed. Risk assessments should follow the format prescribed by the Risk Management Framework i.e. that of the Company’s template risk register.

4.2.6 The Procurement Team shall ensure that whatever method of tendering is chosen, financial appraisals of contractors and bond companies are obtained prior to any contract being let.

4.2.7 Electronic tendering and procurement may be performed on behalf of the Company provided it is carried out in accordance with the systems and processes approved by the Director of Finance, ICT and Governance.

4.3 Preparation of Specification

4.3.1 A detailed and unambiguous specification of the goods, materials or services or work required to be supplied or carried out must be prepared (except to the extent where this requirement is waived by the Rules).

4.3.2 Where it is considered impractical or impossible to prepare a detailed specification of every item of work necessary for the contract to be carried

out; then in such cases provision for such works can be made in the specification in general words. This is subject to a reservation that any such work is carried out under the direct supervision of and on the written authority of the supervising member of staff under the contract.

- 4.3.3** The tender documents must require the tenderer to supply all goods, works and services that meet all necessary legislative and industry standard approvals and are compliant with relevant standards (such as British Standards Institute or EU standards).

4.4 Number of Tenders

- 4.4.1** Except as otherwise provided by these Rules the number of tender invitations required for a contract estimated in excess of £10,000 shall be as follows:

- Estimate £10,000 to £50,000 - not less than three (3);
- Estimate above £50,000 - not less than four (4); and
- Where the estimate is above the EU Thresholds – not less than five (5).

- 4.4.2** There is no stipulation within the Rules that a minimum number of tender bids must be received during each individual tendering process. However if only 1 tender bid is received then the requirements of Rule **4.16.9** must be met.

4.5 Open Tendering

- 4.5.1** Tenders shall be invited following public advertisement where this is required by the EU Rules: -

- 4.5.2** Where the estimated value of the contract is, £10,000 or above:

- A public notice must be published in Source Nottinghamshire as a minimum and, if applicable or relevant, in one or more appropriate trade newspapers or journals. Publication in OJEU will be deemed to be publication in a trade newspaper or journal; and
- The public notice must state the place where interested persons may obtain tender documents and the last date when tenders will be received.

- 4.5.3** Notwithstanding that the contract value is below the EU threshold the contracts must also be advertised sufficiently to ensure competition, avoid discrimination on grounds of nationality and allow impartiality of procurement procedures to be reviewed. (The precise scope and form of

4.5.4 The RO must (subject to EU Rules) allow at least ten days between the published date of any public notice and the last date for receipt of tenders.

4.5.5 This process is to be followed for the selection of partnering contractors.

4.6 Restricted Tendering

4.6.1 The restricted procedure means only those contractors who are invited to do so (following an expression of interest exercise) will be allowed to submit a tender.

4.6.2 Subject to the EU Rules, this Rule applies where the restricted tendering method is used.

4.6.3 Before inviting tenders for any such contract, the RO must publish a public notice in one or more local newspapers, through Source Nottingham and in one or more appropriate trade newspapers or journals.

4.6.4 The public notice must give details of:

- The particulars of the contract;
- How interested persons may apply for permission to tender (i.e. how to receive pre-qualification questionnaires); and
- The period within which the interested persons must respond, which (subject to EU Rules) must be at least 10 days from the published date of any public notice and the deadline for expressions of interest.

4.6.5 After the expiration of the period specified in the public notice, invitations to tender for the contract must be sent to not less than the relevant number (see rules in section **4.4**) of persons who expressed an interest and are considered suitable to tender selected in a manner determined by the Board, either generally or in relation to a particular contract or category of contracts or if fewer than four persons have applied and are considered suitable, to all such persons.

4.7 Negotiated Procedure

4.7.1 The negotiated procedure can only be used where the appropriate Director can show that:

- One of the procedures set out in rules in section **4.5** or **4.6** has been used and resulted in unacceptable or irregular tenders or no tenders or no appropriate tenders; or
- Exceptionally where the nature of the procurement or risks involved does not permit prior overall pricing; or
- The nature of the procurement is such that a precise specification cannot be drawn up; or
- Only one supplier is available for technical or artistic reasons or on account of exclusive rights; or
- A design contest is appropriate to the scheme. In this case all successful candidates shall be invited to participate in the negotiations; or
- Extreme urgency exists for unforeseen reasons which are not attributable to the Company and the various time limits cannot be met; or
- Through unforeseen circumstances additional services (NB the aggregate amount of the "additional services" must not exceed 50% of the amount of the original main contract) not included in the original contract are required provided such services cannot be technically or economically separated from the main contract without great inconvenience, or such services although separate from the original contract are strictly necessary for its completion; or
- There is a need for new services which are a repetition of work already awarded on an earlier contract. The original notice must state that the negotiated procedure might be used. This procedure may be used only during the first three years of the original contract.

4.7.2 In the negotiated procedure, only the chosen contractors are asked to negotiate the terms of the contract.

4.7.3 Using the negotiated procedure is very different to using the restricted procedure with post-tender clarifications (PTC) and post-tender negotiations (PTN).

4.7.4 Subject to the EU Rules, this Rule applies to all contracts with an estimated value of £10,000 or more, if the appropriate Director and the Chief Executive consider that rules in section **4.5** and/or **4.6** are inappropriate.

4.7.5 The appropriate Director, in consultation with the Head of Procurement, may invite or authorise the invitation of tenders from firms by way of a negotiated procedure where the Chief Executive has certified in writing prior to the commencement of the tendering process that the negotiated procedure may be used. Prior to using a negotiated procedure under this Rule, the appropriate Director shall arrange for a report to be prepared, and submit it for consideration by the Chief Executive.

4.8 Tendering by Reference to a Schedule of Rates

- 4.8.1** This Rule applies in any case where provision has been made in the Company's approved estimates for the execution of work and/or the supply of goods, materials or services, which is of a recurring nature and where the Company decides that it is expedient to proceed in accordance with the provisions of this Rule.
- 4.8.2** In a case to which this Rule applies, persons may be invited to tender by reference to rates set against individual items or categories of work, goods, materials or services. The schedule of rates will then remain in force for the whole of the contract in which the expenditure is to be incurred, or a shorter period as approved by the Company in relation to any or all contracts covered by this Rule.
- 4.8.3** In preparing a specification as described in section **4.3** (Preparation of Specification) in cases to which these rules apply, the appropriate RO may require tenderers to submit prices, against a detailed specification of sundry items or work, goods, materials or services against a general description of such items, or against a combination of the two as the case may require.
- 4.8.4** In a case to which this Rule applies it is not necessary to select a single successful tender but a number of tenderers may be selected, the amount or value of work for which any tenderer is to be selected will be at the discretion of the Director having regard to the provisions of Rule **4.8.5** and the rules in section **4.9** (Tendering Instructions).
- 4.8.5** The tenderers selected in accordance with Rule **4.8.4** must generally be those meeting the specified quality standards and submitting the lowest acceptable prices and the number must be:
- Sufficient to execute all of the work and/or supply all the goods, materials or services for which provision has been made in the financial year for which the provision has been made; and
 - Determined by reference to the estimated capacity of those tenderers to complete all orders assigned to them.
- 4.8.6** Where a number of tenderers have been selected the appropriate Director may from time to time place orders with each tenderer according to their estimated capacity for the execution of works and/or the supply of goods, materials or services.
- 4.8.7** The total value of the orders placed in any one financial year must not exceed the provision which has been made in the Company's budgets. Different values of orders may be specified for different categories or work, goods, materials or services.

- 4.8.8** Every order placed under this Rule must be in the approved form, in writing and correctly authorised and a record of all orders placed must be maintained and must be available for inspection.
- 4.8.9** Additional stipulations and conditions may be attached to an order placed under this Rule as the case may require, and in such a case the tenderer must signify in writing his/her acceptance of the conditions before fulfilling the order.
- 4.8.10** The value of the contract in cases to which this Rule applies must not exceed the total amount of the provision in the Company's approved estimates for the categories of work, goods, materials or services in question.
- 4.8.11** In order to ensure competitive tendering of prices, Schedules of Rates must not be set up for less than 6 months or more than five years.

4.9 Tendering Instructions

- 4.9.1** The RO must issue Tendering Instructions to every person/firm invited to tender following a short listing process or whoever requests the supply of tender documents under open tendering – see the rules in section **4.5** (Open Tendering).
- 4.9.2** The Head of Procurement maintains standard sets of instructions and ROs are required to liaise with the Head of Procurement in every case.

4.10 Standard Contract Clauses

- 4.10.1** All Contract terms and conditions must either be approved by the Company Secretary or must be drawn up and vetted by him/her or by any appointed external solicitors, before tenders are invited.
- 4.10.2** Every contract in writing must include the standard contract clauses as specified in this Rule.
- 4.10.3** There is a range of standard contract conditions that apply to various types of contracts and these may be obtained either from the Head of Procurement, Company Secretary or relevant professional bodies.
- 4.10.4** A risk assessment must be made for all contracts and, every contract must include an appropriate provision to protect the Company against all potential risks or failure. Ways of protecting the Company's interests

include the following, and at least one of these measures must be applied in all contracts:

- Performance bond;
- Parent Company Guarantee;
- Ensuring goods/services are to a satisfactory standard before payment;
- Use of manufacturer's guarantees or insurance cover;
- Liquidated damages; and
- Deposit of funds.

Liquidated Damages

4.10.5 Every contract which exceeds an actual, or estimated, annual value of £50,000 in value and is either for the execution of works or for the supply of goods, materials or services otherwise than at one time, must provide for liquidated and ascertained damages to be paid by the contractor in case the terms of the contract are not duly performed. Damages shall be estimated in accordance with recognised practice by the appropriate Director or in consultation with the Company Secretary.

Use of Performance Bonds

4.10.6 Contracts for works of £200,000 or more in estimated annual value must provide for the contractor to be required to furnish a bond (for a minimum of 10% of the contract sum) for due performance of the contract.

4.10.7 In the case of works contracts of an estimated value exceeding £200,000 but not exceeding £500,000 the bond must not be released until the Certificate of Practical Completion or of Substantial Completion of the whole of the works or a Certificate to the like effect has been issued and.

4.10.8 In the case of works contracts of an estimated value exceeding £500,000 the amount of the bond may only to be reduced subject to satisfactory progress of the work and on the issue of a certificate of the appropriate officer, architect or professional consultant engaged by the Company, in accordance with the following scale:

- A reduction to 80% of the full amount of bond on completion of one quarter of the value of the works;
- A reduction to 55% on completion of one half of the value of the works;
- A reduction to 30% on completion of three-quarters of the value of the works; and
- The remaining 30% not to be released until a Certificate of Practical Completion or of Substantial Completion of the whole of the works or a Certificate to the like effect shall have been issued.

- 4.10.9** In the case of any contract made in pursuance of arrangements whereby functions of some other authority or statutory body are discharged by the Company the question whether security for the performance is to be taken, and if so, what form this shall be in will be determined in accordance with the practice of that other authority.
- 4.10.10** For contracts of less than £200,000, performance bonds will not necessarily be required unless the risk assessment so indicates. The choice of measure to be applied to each contract must be determined by the relevant Director in light of the risk assessment, and in consultation and agreement with the Director of Finance, ICT and Governance.
- 4.10.11** Financial vetting by the Director of Finance, ICT and Governance must be carried out of any entity or person providing a performance bond before that performance bond is accepted.
- 4.10.12** Standard clauses relating to the following have been developed by the Head of Procurement in conjunction with the Company's legal adviser and shall be included in all contracts, where applicable:
- Specification Standards;
 - Inducements & Corruption;
 - Termination;
 - Health and Safety;
 - Equality and Diversity;
 - Environment and Sustainability;
 - Data Protection Requirements;
 - Assignment;
 - Freedom of Information Act Requirements;
 - Insurance and Indemnity; and
 - Parent Company Guarantees.
- 4.10.13** Every contract must name the supervising member of staff for the contractor and the Company.
- 4.10.14** Every contract must name the supervising member of staff for the contractor and the Company.
- 4.10.15** Every contract must have a clause requiring the contractor to observe statutory requirements as to the manner in which work is to be carried out.
- 4.10.16** Every written contract must incorporate the specification and any drawings and bills of quantities and any amending correspondence prior to the completion of the contract.

4.10.17 Every contract must include a provision enabling audit inspection of the contractor's documentation as and when necessary.

4.10.18 Every contract must include a provision requiring the contractor to provide any information reasonably requested by the Company:

- Relating to the performance of the contract;
- For the purposes of Transfer of Undertakings (Protection of Employment) Regulations 2006 and any other statutes, statutory instruments or statutory guidance on workforce matters as the Company may reasonably require;
- For the purposes of Internal Audit, external auditors, statutory inspections, any internal investigation, legal inquiry, ombudsman inquiries, arbitration, or court proceedings; and
- Relating to innovations and changes to accord with current best practice.

4.10.19 Every contract must contain a clause stating that all amendments to the contract must be agreed in writing and signed by the duly authorised representatives of the Company and the contractor.

4.10.20 Every contract must contain a clause stating that where a contractor enters into any subcontract in connection with its contract with the Company, it shall remain responsible for the performance of its subcontractors obligations and it shall impose obligations on its subcontractors in terms substantially similar to those imposed on it pursuant to this principal contract.

4.11 Receipt and Opening of Tenders

4.11.1 All tenders received shall be retained and opened, and must have been delivered, in accordance with the procedures set out in these Rules.

4.11.2 Every tender must be delivered to the Company Secretary.

4.11.3 Every envelope containing, or purporting to contain, a tender must at the time of its receipt be marked clearly with:

- The date and time of its receipt; and
- The serial number of its entry in the Tender and Quotations Register.

4.11.4 All envelopes containing, or purporting to contain, a tender must remain in the secure custody of the Company Secretary until the appointed opening time.

- 4.11.5** All tenders for any one contract must be opened at one time provided that tenders received after the time specified in Rule **4.9** (Tendering Instructions) are opened solely for the purpose of ascertaining the name and address of the sender and any such tender is not considered but is returned to the sender.
- 4.11.6** The following provisions will apply when tenders are opened:
- All tenders must be opened in the presence of the Company Secretary or an officer designated by him/her, an officer from the Procurement Team and the appropriate Director or an officer designated by that Director, neither of whom has had any involvement in the tendering process; and
 - The two persons referred to in the bullet point above must mark each tender with the date and time of opening and must sign the tender to authenticate it.
- 4.11.7** The time for submission of tenders shall not be extended in advance of the normal closing date. In exceptional circumstances and in agreement with the Company Secretary, the RO may extend the deadline where it is necessary due to Company failing. The RO must ensure that all the tenderers are informed of the changes and that no tenderer is disadvantaged by the extension. Any extension must comply with the EU Rules, where applicable.

4.12 Clarification Procedures and Post Tender Negotiation

- 4.12.1** Providing clarification of an Invitation to Tender to potential or actual Candidates or seeking clarification of a Tender, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a Tender and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an EU Procedure where this might distort competition, especially with regard to price.
- 4.12.2** Diligence meetings will be attended by a member of the Procurement Team and the RO and held to verify the written tender submission. The meeting will challenge quality and service delivery aspects to ensure that the supplier or service provider fully understood the work content and service level required. Rates may be checked but not amended. If an error is identified then a service provider/supplier who submitted the tender shall be required to state that their rates will be held or shall be forced to withdraw from the process.

- 4.12.3** If post-tender negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best Tender and after all unsuccessful Candidates have been informed.
- 4.12.4** During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the Tender documents, or after clarification of prices in terms of their accuracy or reliability.
- 4.12.5** Officers appointed by the Director to carry out post-tender negotiations shall ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.
- 4.12.6** Negotiations must be conducted by a team of at least two Officers, one of whom must be a representative nominated by the Director of Finance, ICT and Governance. Guidance shall be sought in all cases from the Company Secretary and the Head of Procurement.
- 4.12.7** Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

4.13 Alterations to Amounts of Tenders

- 4.13.1** Alterations to a tender sum will not be permitted except where allowed under Rules **4.13.2** and **4.13.3** below.
- 4.13.2** In the case of tenders submitted for the execution of work and based on priced bills of quantities or schedules of approximate/provisional quantities or schedules of work which are submitted with the tender and form part of the tender documents the effect of errors in totalling, extensions or calculations or other errors or omissions discovered in the tenders will be ascertained and the details notified in writing to the tenderer who will be given the opportunity of:
- Confirming the offer at the original amount;
 - Withdrawing the offer;
 - Amending the offer to correct genuine errors or omissions; or
 - In the case of agency contracts amending his/her tender in a manner directed by the employing authority.
- 4.13.3** The tenderer will be required to confirm in writing either agreement to the offer standing at the original amount or withdrawal of the offer or agreement to the adjusted tender amount within a stipulated period. In the

absence of any such written confirmation within the stipulated period by the tenderer the tender will be treated as withdrawn and will not be further considered.

4.14 Disregarding Tenders

4.14.1 The RO shall disregard tenders (and record the reason for disregarding tenders in the Contract File) where the tenders: -

- Do not comply with Tendering Instructions;
- Do not comply with the provisions of these Rules; or
- Are subject to any reservation, qualification or condition.

4.15 Rejection of Tender Bids

4.15.1 Nottingham City Homes reserves the right to reject a tender bid where it has legitimate concerns about the financial standing of any supplier or contractor (see also Rule **4.16.14**).

4.15.2 Ordinarily, contracts shall not be awarded where the value of the work commissioned is likely to exceed 50% of the bidding organisation's turnover (pro-rated where the contract is for a period less than 1 year). However, all such decisions shall be taken in consultation with either the Head of Finance or the Director of Finance, ICT and Governance.

4.15.3 The RO together with the Procurement Team shall ensure that the reasons for rejecting a tender bid on the grounds of a supplier/contractor's financial standing are recorded in the Contract File.

4.15.4 The RO, in full consultation and agreement with the Head of Procurement, may rescore tenders down where the due diligence process raises doubt over the ability of the individual or firm submitting the tender to fulfil the requirements of the tender specification and deliver the key outputs.

4.15.5 The provision made under Rule **4.15.4** does not extend to increasing the initial assessment of an individual or firm submitting a tender bid and under no circumstances will tender scores be increased during the due diligence process.

4.16 Acceptance of Tenders

4.16.1 All tenders invited by the Company must be subject to the following acceptance and approval procedures.

4.16.2 Subject to the Scheme of Delegation and other Rules, the acceptance of the tender for contracts with a value of over £250,000 must be carried out by the Board upon a report by the Director.

4.16.3 The evaluation process, award criteria and/or the options appraisal, of the tenders received must be clearly documented in the Contract File and shall include confirmation that all technical and financial vetting of the potential contractors has been carried out prior to the letting of any contract.

4.16.4 The basic award criteria will be:

- “Lowest Price” where payment is made by the Company;
- “Highest Price” where payment is to be received, e.g. disposal; and
- “Most economically advantageous” where considerations other than price also apply.

4.16.5 Where the most economically advantageous criterion is adopted it must be further defined by sub criteria, which may include:

- (a) Preparation of a written specification;
- (b) Price;
- (c) Service;
- (d) Customer Service;
- (e) Whole Life Costs;
- (f) Quality of Goods;
- (g) Running Costs;
- (h) Technical Merit;
- (i) Previous Experience;
- (j) Delivery Date;
- (k) Cost Effectiveness;
- (l) Quality;
- (m) Relevant Environmental Considerations;
- (n) Aesthetic and/or Functional Characteristics;
- (o) Safety;
- (p) After-Sales Service;
- (q) Employment Skills and Training and
- (r) Emissions of toxins through distance of supply.
- (s) Locality/origin/distance of supply.

4.16.6 In accordance with the Company’s Value for Money obligations, the evaluation process must take account of both cost and quality aspects of the tenders received. Guidance on evaluation models can be sought from the Head of Procurement.

4.16.7 The evaluation process may involve the identification of a Panel who will collectively score the bidders against the award criteria. In such

- The panel shall always include the RO and in most cases the Head of Procurement or a member of their team;
- Where possible representatives of the Residents Procurement Group shall have the opportunity to participate;
- Where the purchase is of a specialist nature, the Panel shall include specialist advisors, either in-house or external;
- Where the purchase is of particular significance, the RO, in consultation with the Head of Procurement shall establish the requirement or desirability for an Executive Director or Board Member to participate in the Panel; and
- The Panel membership must remain consistent throughout the process i.e. there must not be different members of the panel scoring the bidders from their tender returns to membership of the Panel who would consider the contractors at subsequent interview.

4.16.8 When selecting an interview panel it is acceptable for the panel to include members who were not involved in the scoring of contractors from tender returns, provided the interview panel continues to also include those who were involved in that scoring.

4.16.9 Where only one tender is received, then the Director, Director of Finance, ICT and Governance and the Chief Executive must decide whether to accept that tender or to re-tender. A report of their actions must then be taken to the Board.

4.16.10 Where the financial appraisal of a contractor gives an "extreme caution" rating, the contractor must not be used unless the Director, Director of Finance, ICT and Governance and the Chief Executive carry out a risk assessment and are satisfied that it is safe to proceed.

4.16.11 Tenders/quotations may not be accepted unless evidence has been provided that:

- The tenderer has an awareness of health and safety legislation and best practice, the capacity to comply and satisfactory evidence of compliance with those requirements; and
- The tenderer has an awareness of equality and diversity legislation and best practice, the capacity to comply and satisfactory evidence of compliance with those requirements.

4.16.12 The Director, in evaluating the tender, must apply the following:

- Where the Company is incurring expenditure, the Director must accept the most economically advantageous tender or the lowest priced tender; and
- Where the Company is receiving income, the Director must accept the highest tender unless a lower level of income would be more economically advantageous.

4.16.13 The Director must not accept any tender that is more than the amount specified in the Company's approved estimates and/or for which there is an adequate designated budget, unless they have previously made alternative financial provision under the Financial Regulations.

4.16.14 Any tender where the submitted price is exceptionally low, i.e. 20% (or more) lower than estimate, shall be requested to explain the basis of its tender price. If the explanation is not considered adequate the tender may be rejected subject to the agreement of both the RO and the Head of Procurement and compliance with Rule **4.15.3**.

4.16.15 After accepting a tender the Director must ensure that any authority to proceed with works is subject to Rule **5.2** (Orders Given Under Contracts).

4.16.16 Certificates regarding insurance arrangements, in a form approved by the Director of Finance, ICT and Governance, must be obtained from successful tenderers before any services are provided or works are undertaken in a contract (this does not apply to contracts for the supply of goods and/or materials only).

4.16.17 When disclosing any information to any person the following shall be complied with:

- Any tenderer who was unsuccessful at any stage of the tendering procedure must be informed of the reasons why they were rejected within 15 days of receiving a written request;
- Unsuccessful tenderers may request the Company to provide the name of the person awarded the contract, the characteristics and the relative advantages of the successful tender; and
- The Company must have regard to leaseholders' comments before awarding the contract in accordance with Section 151 of the Commonhold & Leasehold Reform Act 2002.

4.16.18 The Company may withhold any information where the disclosure of such information:

- Would impede law enforcement;
- Would otherwise be contrary to the public interest;
- Would prejudice the legitimate commercial interests of any person; or
- Might prejudice fair competition between contractors.

- 4.16.19** Any contract with a value between £50,000 and £149,000 requires the approval of the respective Director.
- 4.16.20** Any contract with a value above £150,000 requires the approval of the Chief Executive.
- 4.16.21** Where the contract value exceeds £250,000 authorisation from the Chair of the Board is required.
- 4.16.22** For all contracts over £10,000 the RO must notify all candidates simultaneously and as soon as possible of the intention to award the contract to the successful candidate. Unsuccessful candidates must be provided with a period of ten days in which to challenge the decision. In the event of a challenge legal advice shall be sought immediately.
- 4.16.23** Unless specific legal advice directs otherwise, all candidates are to be advised only of the following information:
- How the award criteria were applied;
 - The prices submitted, but not correlated to candidates names; and
 - The names of the candidates in cases where there were three or more bidders.
- 4.16.24** If a candidate requests in writing the reasons for a contracting decision, the RO must give the reasons in writing within 15 days of receipt of the request. If requested, the RO may also give the debriefing information to candidates who were deselected at the shortlisting stage.

4.17 Withdrawals

- 4.17.1** If any person or firm withdraws a tender, declines to execute a contract after their tender has been accepted or has not carried out a contract in a satisfactory manner, the Company may decide that:
- No further tender from that person or firm shall be sought for a prescribed period (not exceeding three years); and
 - The name of that person or firm shall be deleted from the appropriate approved list of contractors.
- 4.17.2** The RO together with the Procurement Team shall ensure that any such decisions are recorded in the Contract File and a central record is held within the Procurement Team for reference purposes.

4.18 Register of Tenders

4.18.1 The Company Secretary shall maintain a central Tender and Quotations Register which must contain the following details:

- The nature of the supplies, services or works involved;
- Budget information including the approved estimates (showing provision for the expenditure) and confirmation that sufficient budget remains to cover the expenditure;
- The method of tendering used, citing any necessary authority or instructions;
- The last date and time for the receipt of tenders;
- The names of the persons that were invited or entitled to tender;
- Whether any named person is to be a nominated/named subcontractor and the reason for this;
- The date and time that each tender was received;
- The date and time that each tender was opened;
- The amount of each tender received;
- The officers in whose presence the tenders were opened i.e. those officers who sign the register;
- The tender which was accepted (if any) and by whom it was accepted;
- The reason for acceptance, where the RO did not accept the lowest (or where appropriate the highest) bid;

- Whether any leaseholder consultation has been carried out and if so, how it can be shown that the decision was made with/without regard to their feedback and why;
- Whether any tender has been returned to the sender because it was received after the deadline;
- Any approved extra or variation to a contract; and
- Indicate whether the contract has been advertised in the Official Journal of the European Union (OJEU) and the date where applicable.

4.18.2 A Tender Summary report is produced by the Procurement Team for all tenders. The summary contains details of all the relevant tender information as well as the required signatories.

4.18.3 The Director must give written notification to the Company Secretary of the details of all contracts or engagements entered into by his/her department as soon as practicable after execution with a reference of the authority for the contract or engagement.

4.19 E-Procurement and E-auctions

- 4.19.1** The use of e-procurement technology does not negate the requirement to comply with any aspect of these Rules.
- 4.19.2** E-auctions will always be advertised meeting European legislative requirements based upon a Price / Quality evaluation.
- 4.19.3** Where a 'sample' evaluation is incorporated, this will be undertaken in the first instance by Officers and the Residents Procurement Group prior to the quality evaluation to establish transparency throughout the process.
- 4.19.4** Quality evaluation will be undertaken prior to the 'Live auction' and in isolation if initial indicative rates are submitted.
- 4.19.5** Where the e-auction online system allows, the quality and sample evaluations scores will be input so that when the 'Live auction' takes place the Most Economically Advantageous Tender is identified in real time through a points scoring mechanism.
- 4.19.6** Access to 'live e-auctions' shall be controlled and restricted with all attendees required to remove all electronic communication devices such as mobile phones, laptops, PDA's from their possession before access to the auction is allowed.
- 4.19.7** All attendees will be required to sign a confidentiality agreement and not communicate with anyone the results of the tender until the Due Diligence process is complete and the contract awarded. Under no circumstances is commercially sensitive data to be shared with any other person or persons at any time following the E-auction.

5 CONTRACTS

5.1 Form of Contract

- 5.1.1** Every contract must be in writing, prepared or on a basis approved by the Company's legal advisors and in a form agreed by the Director of Finance, ICT and Governance.
- 5.1.2** Every contract up to a value of £200,000 must be signed on behalf of the Company by a Director or an officer authorised in writing to do so by the respective Director.
- 5.1.3** Every contract up to a value of £200,000 must be sealed by the Company if in the opinion of the Company Secretary and/or Company's legal advisors it is significantly advantageous to do so.
- 5.1.4** Details of all contract valued between £100,000 and £200,000 must be provided to the Company Secretary so that consideration can be given to whether it is significantly advantageous for the contract to be sealed.
- 5.1.5** Every contract of a value exceeding £200,000 must be sealed by the Company.
- 5.1.6** Every contract shall specify or, in the case of a contract by Official Order, must refer to other documents specifying:
- The work, services or goods to be provided;
 - As appropriate, the start and finish dates or delivery dates and any maintenance or defects liability period;
 - The price to be paid or the precise method of its ascertainment and any discount or other deductions; and
 - The contract conditions required by these Rules to be incorporated.
- 5.1.7** Standard forms of contract such as JCT 80 with Partnering agreement, JCT Measured Term, JCT Minor Works, NEC3 Supply Contract, PPC 2000 and TPC 2005 can be used if verified and signed by an appropriate Head of Service or Director.
- 5.1.8** Where a standard form of contract is issued by the regulatory body, trade industry or profession, this must be used in conjunction with these Rules. The RO must ensure that the contract is approved and executed by the Company's legal advisors.

5.2 Orders Given Under Contracts

- 5.2.1** A Director, or their delegated officer or consultant, must not authorise a contractor to proceed with the contract where the contractor is required to provide proof of insurance and has failed to do so, or where the Company requires a written contract prior to the start of the contract.
- 5.2.2** A Director must not permit a contractor to enter on any land or buildings belonging to the Company or Council or to start work on site until the order to proceed with the contract has been issued and the following actions are completed:
- The contractor has signed or sealed contract documents;
 - All procedures have been completed to the satisfaction of the Company's legal advisors and the Director of Finance, ICT and Governance;
 - Where appropriate, the performance bond is duly completed;
 - Where appropriate parent Company guarantees have been examined and approved;
 - All necessary insurance certificates have been obtained from the contractor; and
 - Such other documents as the RO may consider are required (such as escrow agreements, collateral warranties or third party software licences) have been obtained from the contractor.
- 5.2.3** The Director is responsible for all orders issued on his/her behalf from their department.
- 5.2.4** The Director must ensure that all orders for supplies, services or works are in writing and on official order forms.

5.3 Extras and Variations

- 5.3.1** Any extra or variation to a contract must be specifically authorised in writing by the Director or a designated member of staff, who must retain a copy of this authorisation as a document relating to the contract. If the extra or variation is likely to result in an increase in the contract sum, then the RO must obtain authority for the additional expenditure in accordance with the Financial Regulations and must establish whether leaseholder consultation is necessary before any extras or variations are agreed – see Rule 7.4. The overall costs must be contained within agreed budgets.
- 5.3.2** Where the contract supervisors are not Company officers, the contract with the supervisors must provide that no tangible change be made to the specification without the prior written consent of the Company.

- 5.3.3** Each Director must ensure that its department has control procedures and audit trails in place to deal with extras and variations.
- 5.3.4** Executive Directors may agree variations for revenue contracts where these do not increase the approved contract price by more than 10% or £10,000, whichever is the lower, and the additional expenditure can be met from within the approved budget. If, for any reason, the extra expenditure exceeds 10% (or £10,000) of the Contract sum, the details shall be reported to the Board.
- 5.3.5** The Chief Executive shall be able to agree variations of more than 10% on contracts originally valued at less than £10,000, up to the value of an additional £10,000, where the additional expenditure can be met from approved budgets without reporting the details to the Board.
- 5.3.6** Executive Directors may agree variations to Capital projects where these do not increase the approved contract price by more than 5% or £75,000, whichever is the lower, and the additional expenditure can be met from within the approved budget and falls within the MTFP.
- 5.3.7** Claims from contractors in respect of matters not clearly within the terms of any existing contract shall be referred to the relevant Executive Director for financial consideration before a settlement is reached or before any offer of settlement is made. Any such settlement must also be approved by the Chief Executive or the Board in line with the Company's authority levels.

5.4 Termination of Contracts

- 5.4.1** All contracts, irrespective of value, shall clearly specify the provision under which the Company reserves the right to cancel or terminate the contract.
- 5.4.2** Where a decision is taken by the Company to terminate a contract the Company may decide that:
- No further tender from that person or firm shall be sought for a prescribed period (not exceeding three years); and
 - The name of that person or firm shall be deleted from the appropriate approved list of contractors.
- 5.4.3** A register of all such decisions shall be held by Governance and made available to the Procurement Team.

6 OTHER CONTRACTS AND AGREEMENTS

6.1 Collaborative and Alternative Arrangements

- 6.1.1** Prior to commencing any procurement process using Office of Government Commerce (OGC) Buying Solutions Contracts, Procurement for Housing (PfH) or any other consortia, the RO must complete APPENDIX 7 – Authority for OGC Contract or Collaborative Arrangements and obtain authorisation from both the Head of Procurement and the Director of Finance, ICT and Governance before proceeding. The terms and conditions of any arrangement, including the requirement to undertake competition between providers, must be fully complied with.
- 6.1.2** To secure Value for Money, the Company may enter into collaborative arrangements. Any proposed arrangements must have approval from both the Director of Finance, ICT and Governance and the Head of Procurement, again using APPENDIX 7 – Authority for OGC Contract or Collaborative Arrangements. Negotiations will also require the support of the Company's legal advisers.
- 6.1.3** Where purchases are made via a consortium arrangement any purchases above the EU threshold must be let under the EU procedures, unless the consortium has satisfied this requirement already.
- 6.1.4** Any contracts entered into through collaboration with other ALMOs, local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation will be deemed to comply with these contract procedure rules.

6.2 Framework Agreements

- 6.2.1** The term of a Framework Agreement must not exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.
- 6.2.2** Where contracts are based on Framework Agreements these may be awarded by either:
- Applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition;

- Where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call off, by holding a mini competition;
- Any mini competition shall be carried out by inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders;
- A time limit must be fixed which is sufficiently long to allow Tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract; and
- Each contract is to be awarded to the tenderer who has submitted the best Tender on the basis of the Award Criteria set out in the specifications of the Framework Agreement.

6.3 Contracting Authority

6.3.1 This Rule applies to the execution of any work or other action which is undertaken by the Company as an agent for another local authority, registered provider, Government department, statutory body, as part of an approved consortium or in any other case where the Board authorises that this Rule applies.

6.3.2 Care must always be exercised to ensure that the Contracting Authority's own requirements are satisfied in full, particularly where these impose tighter controls than provided within these rules.

6.3.3 Where financial provision for the work in question appears in Nottingham City Homes' own budget or the HRA, the provisions of these Rules will apply with regard to tendering procedures and contractual arrangements subject to:

- Any additional requirements imposed or any variations or departure authorised by the principal authority; and
- The principal authority first confirming that it accepts financial responsibility for the work provided that the Director, before implementing any variation or departure is satisfied that the Company's interests will not be prejudiced by such action.

6.3.4 In a case to which this Rule applies and where financial provision does not appear in either Nottingham City Homes' own budget or the HRA then:

- Either the provisions of Rule **6.3.3** may apply at the written request of the principal authority, or
- Such other arrangements may be made for tendering and contracts as the principal authority may specify.

6.3.5 The RO and Head of Procurement shall ensure that where NCH is acting as the Contracting Authority robust and adequate negotiations, designed to secure income for allowing others to use the related Framework or Term Contract, are held with all proposed users.

6.4 Appointment of Consultants

6.4.1 Procurement of Consultants shall be in accordance with these Rules, including Rule **7.4** on leaseholder consultation. In all cases where the value of the work exceeds £10,000 APPENDIX 8 – Consultancy Agreement, is to be completed and signed by both parties.

6.4.2 Consultants may only be used where:

- Specialist expertise is required which is not available within the Company;
- Specialist expertise is required which is available within the Company but demand cannot be efficiently or effectively supplied;
- An external arbitrator is required; and
- Proposed appointment is for a discrete and designated period of time.

6.4.3 The procedure to be followed in appointing external Consultants will depend on the total estimated value of the contract in question, as follows:

- Less than £30,000 - the appointment of a Consultant may only be made with the consent of the Director;
- £30,000 or more but less than £100,000 - the appointment of a Consultant may only be made with the approval of the Director in consultation with the Chief Executive; and
- £100,000 or more, the appointment of a Consultant may only be made with the approval of the Chief Executive and must be notified to the Board.

6.4.4 The procedure to be followed for the appointment of Consultants where the estimated total value of the contract is less than £30,000 will be as follows:

- Less than £500 - may be made without competitive quotations subject to Regulation **6.4.6**;
- £500 or more but less than £5,000 - may be made after seeking at least 3 written quotations and obtaining at least 2; and
- £5,000 or more but less than £30,000 - may be made after seeking at least 4 written quotations and obtaining at least 3.

- 6.4.5** In exceptional circumstances, Directors can approve the use of consultants at a cost less than £30,000 without seeking quotations, subject to a written quotation being received from the consultant to be used and success criterion formally established. Such circumstances will require the documented approval of the Chief Executive and must ensure that Value for Money is secured.
- 6.4.6** In all cases, a written quotation shall be obtained before an order is placed.
- 6.4.7** Where work is so specialised and/or genuine time deadlines exist attached with financial penalties beyond the control of the Company, that it is not possible to find sufficient qualified Consultants to meet the requirements of Rule **6.4.4** above, then prior written approval may be given by the Chief Executive to the appointment of a qualified consultant from a lesser number.
- 6.4.8** Where the total estimated contract value exceeds the European Union public procurement threshold for a Part A Service (see APPENDIX 2 – EU Thresholds and Categories of Services) the contract must be tendered by way of public advertisement.
- 6.4.9** Post-contract monitoring reports are to be completed in a timely manner for all consultancy contracts of £10,000 and above. The reports are to be designed so as to:
- Assess the performance of the Consultant;
 - Assess whether Value for Money was achieved; and
 - Evaluate the tender assessment model used where appointments were made on the basis of the most economically advantageous tender.
- 6.4.10** All consultants appointed are required to complete the standard form of agreement, included as APPENDIX 8 – Consultancy Agreement. Where the Director considers that modifications to the clauses in the standard agreement are required, the advice of the Company Secretary shall be obtained in all cases.
- 6.4.11** The Director will be responsible for ensuring that any Consultant (who is not an officer of the Company) engaged to supervise a contract, liaises with the Director so that the Consultant complies with the requirements of these Rules as if he/she were an officer of the Company.
- 6.4.12** The process of engaging former employees of the Company as consultants shall be the same as engaging any other person as a Consultant.

- 6.4.13** The use of the term "Consultants" in this Rule does not apply in the following instances where individuals are required to fill Establishment Posts i.e. those within the Company structure, on a temporary basis:
- Recruitment through an agency or similar organisation which provides temporary staffing resources; or
 - Self employed or sole traders recruited following publication of an open advert for the respective temporary role.
- 6.4.14** Rule **6.4.13** does not negate the responsibility of Directors and Managers who authorise such appointments to ensure that Value for Money is both obtained and can be clearly demonstrated and that they are for an agreed period of time. Directors are also responsible for reviewing appointments where costs are in excess of the respective aggregated budget provision on a regular basis as well as authorising any decision to re-appointment at the end of previously agreed appointment periods.
- 6.4.15** Where the responsibility for managing the recruitment process for a temporary or permanent post is to be delegated to an external organisation, or consultant, the requirements of Rules **3.1.1** and **3.2.1** still apply to the respective fees and charges i.e. Rule **6.4.13** does not apply to the costs associated with managing the recruitment process.
- 6.4.16** The use of the term "Consultants" in this Rule does not include legal counsel instructed by the City Council's legal team on behalf of the Company.

7 OTHER MATTERS FOR CONSIDERATION

7.1 Declarations of Interest

7.1.1 The following persons shall declare any interests which may affect the contract process:

- All permanent or temporary staff whom each Director considers plays an influential role in any aspect of the contracts process;
- External consultants; and
- Resident representatives appointed under Rule **7.2** (Residents Procurement Group – Residents Representatives).

7.1.2 Directors shall ensure staff, consultants and resident representatives appointed or agreed by them, make declarations on their appointment, on any change in circumstances (and annually in the case of staff), and shall either certify them as acceptable or take any necessary action in respect of potential conflicts of interest.

7.1.3 Directors shall ensure completed staff declarations are held on the individual's personnel file and a register of staff declarations indicating the names and grades of those declaring and the nature of their declaration. ROs shall keep completed consultants' and resident representatives' declarations on the Contract File.

7.2 Residents Procurement Group – Residents Representatives

7.2.1 Members of the Company's Resident Procurement Group, but not tenant members of the Board, shall be able to participate in drawing up specifications, interviewing contractors and monitoring contracts as part of the formal tender process. The agreement of the Chief Executive is required for any other type of involvement.

7.2.2 Resident representatives may advise the ROs where appropriate, but all decisions must be taken within the framework of the Scheme of Delegation.

7.2.3 ROs are responsible for ensuring that resident representatives give a written undertaking (before they receive any confidential information) to treat all information confidentially throughout the tender process and the life of the contract.

7.2.4 Contrary to Rule **7.2.1** resident members of the Finance and Audit Committee may contribute to the interview/evaluation of candidates as part of any formal process undertaken to tender the appointment of the Company's internal or external auditors. This is to ensure that all members

can fulfil their duties and responsibilities in respect of the appointment and re-appointment of the Company's internal and external auditors as set out in the Scheme of Delegation.

7.3 The Transfer of Undertakings – TUPE

- 7.3.1** The RO must, at the earliest opportunity, seek advice from Director of Organisational Development on the detailed implications if TUPE is likely to apply.
- 7.3.2** If the RO believes that Transfer of Undertakings (Protection of Employment) Regulations 2006 may apply to a contract, they must notify and advise the contractors in the tender instructions to seek their own independent professional advice.
- 7.3.3** The RO must have regard to statutory and other guidance issued by the Government on workforce matters.
- 7.3.4** Where TUPE implications will apply to new contractors or suppliers as a result of cessation of service by an existing supplier a statement shall be included in all tenders.

7.4 Leaseholder Consultation

- 7.4.1** Care must be taken in all situations where the recharging thresholds in Section 20 of the Landlord and Tenant Act 1985 or Commonhold & Leasehold Reform Act 2002 apply or may apply.
- 7.4.2** All Leaseholder consultation shall be performed in liaison with the Tenant and Leaseholder Involvement Manager to ensure that adequate advice and support is provided to the procurement team to guarantee that all legislative requirements are satisfied during the consultation process.
- 7.4.3** Pre-contract consultation with leaseholders is necessary in the following circumstances:
 - A proposed new long term agreement for the provision of works, goods or services may result in a recharge to any leaseholder of more than £100 in any year. A qualifying long term agreement must be for a term of more than one year and includes agreements with no prescribed end date; and/or
 - A proposed contract will include works that may result in a recharge to any single leaseholder of more than £250 including VAT. This applies to works under existing long term agreements, including partnering agreements, as well as ad hoc contracts.

- 7.4.4** Leaseholders may have to be consulted or re-consulted when additional works are deemed necessary under contracts already in progress. If the full consultation process is not possible, the consultation will comply with legislation as far as practicable.
- 7.4.5** A Leasehold Valuation Tribunal and/or the Secretary of State has the power to waive some or all consultation requirements, but will do so only if they consider this is reasonable, having regard to all the circumstances.
- 7.4.6** The formal consultation process will vary according to the circumstances, but will comprise one, two or three stages. This process must be anticipated and incorporated into the contract programme.
- 7.4.7** The RO must provide all information necessary to enable the Home Ownership Unit to carry out statutory consultation or to seek dispensation from a Leasehold Valuation Tribunal.

7.5 Environmental Considerations – Risk and Health & Safety

- 7.5.1** Environmental issues - Wherever possible, purchasing decisions shall comply with the environmental commitment to pursue environmental sustainability through its purchasing decisions.
- 7.5.2** Products, substances or services will not be used:
- Where they are known to create pollution to the environment or could have a greater potential for adverse health effects; and
 - Where there are adequate and economic alternatives.
- 7.5.3** For information on relevant pollution and environment legislation and guidance please refer to the Health and Safety Unit.
- 7.5.4** All purchasing must be made according to the Asset Management Strategy and the Procurement Strategy and any codes of practice or guidance issued as a result.
- 7.5.5** The Director or RO responsible for the specification must, wherever possible, specify types of products (not brands), substances and services which at least:
- Ensure that the specification does not include the use of products, substances or services which have been withdrawn from use under the provisions of Rule **7.5.2**; and
 - Wherever possible, specify environmentally friendly products, substances or services but if in doing so an extra cost difference is anticipated, must invite tenderers to provide details of an alternative product for consideration.

- 7.5.6** Nottingham City Homes encourages purchasing to promote environmental sustainability. A first step is to ask suppliers for a copy of their Company's environmental policy. The use of recognised "eco labels" or certified environmental management systems such as the EU Eco Label, Nordic Swan, German Blue Angel, US Energy Star, Scandinavian TCO, ISO 14001 and EMAS indicate that companies are addressing their environmental impacts.
- 7.5.7** Health and safety standards - Procedures in relation to Health and Safety are contained in the Health and Safety Manual. These must be adhered to at all times as if they formed part of these Rules.
- 7.5.8** Works, goods and services are delivered to meet legally enforceable health and safety standards as a minimum. In practice Nottingham Homes has adopted best practice as the preferred standard and will seek to identify and adopt best practice as the standard to be met in its policies and delivery of works, goods and services.
- 7.5.9** ROs shall consider the controls of substances hazardous to health (COSHH) prior to ordering any product or substance that could be harmful to an employee, tenant/leaseholder or any other individual who comes in contact with them.
- 7.5.10** Directors must ensure that in all tenders/quotations for works goods and services tenderers are invited to tender/specify works, goods and services to meet industry best practice standards for health and safety.
- 7.5.11** Directors must ensure that safe working methods specified by tenderers are examined and accepted against industry best practice standards for health and safety and risk assessment.
- 7.5.12** The Director must ensure that practices for health and safety management of construction work within Construction (Design and Management) Regulations 2007 (SI no. 320) ("the CDM Regs") will be adopted as a standard of best practice (taking into account proportionality) whether the works meets the definition of construction as defined in the CDM Regs or not.
- 7.5.13** The Director must ensure that:
- Tenders demonstrate awareness of health and safety legislation and Health and Safety Executive and other authoritative guidance as it may apply;
 - All those submitting tenders are informed of significant hazards associated with the work under the control or responsibility of the Company and how the hazards may be controlled;

- In the health and safety induction process for successful tenders prior to any work being carried out in Company controlled workplaces; and
- In written health and safety risk assessments included in the contract documents for consideration of necessary risk management and controls so that these can be included in costings and arrangements for health and safety.

7.5.14 Although the responsibilities set out in paragraphs **7.5.10** to **7.5.13** are those of the Director, the respective Responsible Officer (RO) is also responsible for monitoring compliance and ensuring that the relevant Director is provided with the information required to fulfil their responsibilities as set out in the Rules.

7.5.15 Health and Safety Team will carry out unannounced and random checks on all contracts and in-house works, especially those relating to high risk activities such as construction, repair and maintenance works. Following such visits the Health and Safety Team will notify the Project Manager of the visit, report any findings or action taken and make recommendations as necessary. Should the Health and Safety Team discover or witness any activities or situations where there is a significant risk of harm, they have authority to take immediate action to control or eliminate the risk. This may include stopping works or cordoning off an area.

7.6 Emergencies and Disasters

7.6.1 This Rule applies in the event of a civil or war emergency or the occurrence of a natural or other disaster, where it is necessary for the Company, in the discharge of any of its delegated functions, to obtain, as a matter of urgency, goods/supplies/materials and/or carry out any work by contract in order to:

- Save or preserve life or property; or
- Carry out any service in the public interest.

7.6.2 Where this Rule applies Executive Directors may place an order for goods, supplies, services or work deemed necessary, either:

- After having obtained the authority for a dispensation from the Rules (see **1.5**), if the circumstances and urgency of the situation permit – see APPENDIX 4 – Authority for Dispensation; or
- Immediately if it is not possible to obtain prior authority for a dispensation.

In cases of the latter, a report of action taken and the expenditure incurred must be submitted to the next available meeting of the Board.

7.6.3 Competitive tenders need not be obtained prior to the placing of an order as required by these Rules but the Director concerned must satisfy himself/herself before placing an order that the expenditure incurred will be reasonable in all the circumstances of the case. The Director must also consider whether there may be leaseholder consultation implications as set out in Rule **7.4**.

7.6.4 In cases to which this Rule applies the Director responsible for the work or goods, materials or services to be carried out or provided must take all necessary steps to ascertain the number and the names of persons able and willing to submit tenders and in consultation with the Director of Finance, ICT and Governance must follow the dispensation procedure provided by Rule **1.5**.

7.6.5 An invitation to tender under this Rule may, subject to the approval of the Finance and Audit Committee, invite:

- The submission of a quotation or estimate; or
- The negotiation of a price.

In the latter case Rule **4.11** (Receipt and Opening of Tenders) will not apply but the Director concerned with the negotiations will report directly to the Finance and Audit Committee.

8 APPENDICES

8.1 APPENDIX 1 – EU Rules of Aggregation of Contract Values

1. A main factor affecting the application of EU Procurement rules is the value of the supplies, services, or works that are provided or undertaken for the organisation. In valuing a contract or transaction it is also necessary to consider whether the “aggregation” rules apply. In principle the relevant value for threshold purposes is the value of each individual contract, however, in certain circumstances it is necessary to add together the value of purchases made under a number of similar contracts. In essence this means that the value to be used is the greater of:
 - The individual contract value;
 - The total value of a series of similar contracts;
 - The total value of the contract if it is renewed in accordance with the terms of the contract; and
2. The highest value must always be used and “estimates” must be genuine.
3. Contracts must not be sub-divided, or split to try and avoid the application of the rules. Note that dividing the work among two or more suppliers/contractors/service providers does not avoid application of the rules.
4. In estimating the contract value, the aggregation rules of the EU Directives shall be used. If the estimate of the contract value is within approximately 20% of the EU threshold it may be prudent to let the contract using EU Procurement procedures.
5. Further advice is available from the Head of Procurement, Company Secretary or the Company’s legal advisors.

8.2 APPENDIX 2 – EU Thresholds and Categories of Services

EU Thresholds

Thresholds 2010: Public Contracts regulations 2006 – From 1st January 2010

	Supplies	Services	Works
Entities listed in Schedule 1	£101,323 (€125,000)	£101,323² (€125,000)	£3,927,260 (€4,845,000)
Other public sector contracting authorities (Local Authorities)	£156,442 (€193,000)	£156,442² (€206,000)	£3,927,260 (€4,845,000)
Indicative Notices	£607,935 (€750,000)	£607,935 (€750,000)	£3,927,260 (€4,845,000)
Small Lots	£64,846 (€80,000)	£64,846 (€80,000)	£810,580 (€1,000,000)

- Schedule 1 of the Public Sector Regulations 2006 lists central government bodies subject to the TWO GPA.
- With the exception of the following services, which have a threshold of £156,442 (€193,000):
 - Part B (residual) services;
 - Research & Development Services (Category 8);
 - The following Telecommunications services in Category 5;
 - CPC 7524 - Television and Radio Broadcast services.
 - CPC 7525 - Interconnection services.
 - CPC 7526 - Integrated telecommunications services.
 - Subsidised services contracts under regulation 34.

Utilities contracts regulations 2006 – From 1st January 2010

	Supplies	Services	Works
All Sector	£313,694 (€387,000)	£313,694 (€387,000)	£3,927,260 (€4,845,000)
Indicative Notices	£607,935 (€750,000)	£607,935 (€750,000)	£3,927,260 (€4,845,000)
Small Lots	£64,846 (€80,000)	£64,846 (€80,000)	£810,580 (€1,000,000)

Categories of Services

Part A - Priority Services

1. Maintenance and repair of vehicles and equipment
2. Transport by land, including armoured car services and courier services, but not including transport of mail and transport by rail
3. Transport by air but not transport of mail
4. Transport of mail by land, other than by rail, and by air
5. Telecommunications services other than by voice telephony, telex, radiotelephony paging and satellite services
6. Financial services, notably:
 - Insurance services; and
 - Banking and investment services other than financial services in connection with the issues, sale, purchase or transfer of securities or other financial instruments, and central bank services
7. Computer and related services
8. Research and Development services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the services are to be wholly paid for by the contracting authority
9. Accounting, auditing and book-keeping services
10. Market research and public opinion polling services
11. Management consultancy services and related services but not arbitration and conciliation services
12. Architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services; related scientific and technical consulting services; technical and analysis services
13. Advertising services
14. Building cleaning services and property management services
15. Publishing and printing services on a fee or contract basis
16. Sewerage and refuse disposal service; sanitation and similar services

Part B - Residual Services

17. Hotel and restaurant services
18. Transport by rail
19. Transport by water
20. Supporting and auxiliary transport services
21. Legal services
22. Personnel placement and supply services
23. Investigation and security services other than armoured car services
24. Education and vocational education services
25. Health and Social Services
26. Recreational, cultural and sporting services
27. Other services

8.3 APPENDIX 3 – Confidentiality

- 1 Directors are responsible for ensuring that the confidentiality of tenders is maintained within their departments throughout the period from tender opening to contract award. In particular they are responsible for ensuring that their department has in place a system of regular management checks to ensure that ROs have made appropriate arrangements to maintain confidentiality. This is particularly important for major contracts and those contracts where in-house bids are likely.
- 2 As part of the confidentiality process, the RO is responsible for reminding the project team of their duties in this respect at the first project team meeting. This must be done formally and minuted.
- 3 Confidentiality must be maintained throughout the tender process from the opening of the tenders through tender evaluation, any post-tender clarifications or negotiations, and up to and including the award of contract. In particular, ROs are responsible for ensuring the safekeeping and security of:
 - Tender opening notices and all tender submissions, or re-submissions after post-tender clarifications or negotiations;
 - All tender evaluation reports, working papers and minutes of meetings; and
 - All reports and draft reports to, and minutes of the Executive Management Team, Directors, Board or Committees.
- 4 In addition, the RO must ensure the safekeeping and security of all documentation and computer files (using password protection), including files on any data storage medium, and for the distribution of all documentation including reports, faxes, electronic mail, and telephone communications. The RO needs to consider to whom documentation shall be released, taking into account the statutory declarations on the confidentiality of consultees, and must also take care in discussing issues verbally and consider with whom these issues are discussed.
- 5 Outside the project team, information shall only be provided on a strict need to know basis or where there is a legal requirement. Particular care must be taken on contracts where bids are expected or received from an in-house team, a management buy-out or a management buy-in. Consideration must also be given to any special arrangements that might be necessary to maintain confidentiality when there is a need to involve officers from other departments or other locations, or other parties which have a legitimate interest in any part of the contract process.

- 6 If an officer accepts a position with an external contractor, consultant or other organisation which has expressed an interest in tendering for Company contracts, then particular care must be taken to maintain confidentiality whilst that officer remains in the Company's employment.

8.4 APPENDIX 4 – Authority for Dispensation

NOTTINGHAM CITY HOMES	
REPORT OF THE DIRECTOR OF	
1	SUMMARY
1.1	
2	RECOMMENDATIONS
	It is recommended that:
2.1	
3	REPORT
3.1	
4	IMPLICATIONS FOR NOTTINGHAM CITY HOMES OBJECTIVES
4.1	
5	VALUE FOR MONEY & EFFICIENCY ISSUES
5.1	
6	RISK ISSUES
6.1	
7	COMMENTS OF THE DIRECTOR OF FINANCE, ICT AND GOVERNANCE
7.1	
8	EQUALITY & DIVERSITY IMPLICATIONS
8.1	
9	BACKGROUND MATERIAL AND PUBLISHED DOCUMENTS

	REFERRED TO IN COMPILING THIS REPORT	
9.1		
CONTACT OFFICER:		
DATE:		

**AUTHORITY FOR DISPENSATION FROM THE TENDER AND CONTRACT
PROCEDURE RULES**

Issue:

Supporting Report Attached (Report from Director dated.....)

Approval:

Chief Executive

.....signed by Date:

Director of Finance, ICT and Governance

.....signed by Date:.....

Authority:

Chair of Finance and Audit Committee

.....signed by Date:.....

Record:

Register of Dispensations updated with this decision by Company Secretariat

.....signed by Date:.....

8.5 APPENDIX 5 – Quotations for estimated expenditure between £500 and £10,000 – Note for Retention

All written quotations requested and received by the Responsible Officer are to be recorded using this form. Following completion forms shall be forwarded on to the Procurement Team. See also section 3.1.

Process *	Contractor Name (1)	Contractor Name (2)	Contractor Name (3)	Contractor Name (4)
Quotation received (£) or “Did Not Quote”				
Relevant trading terms or pricing				
Date & time received				
Officer obtaining quotes				
Quotation accepted				
Contract/Order details				
Reason for accepting				
Directorate		Service Area		
One World – Business Unit		Order reference *		Date Raised:
One World – Object Code		Budget Holder		
Responsible Officer (Post Title)		Signature		Date:

* – Quotes must only be requested and, more importantly, commitments made with suppliers and/or orders raised where sufficient budget provision, agreed with the respective budget holder, is in place to fund the proposed expenditure.

8.6 APPENDIX 6 – RO Request For Tender Form

Scheme/Project Name	
Commissioning Department	
Client Officers to be involved	
Anticipated Value (Annual or Total)	
Expected Contract Start Date	
Length of Contract (plus any extensions)	
Criteria for Tender Assessment (Price/Quality split)	
Resident Procurement Involvement	
Leaseholder Involvement	
How many contractors are expected to be awarded the contract?	
Scope of work, including: <ul style="list-style-type: none"> ○ Overall Project Brief ○ Background ○ Aims & Objectives ○ Area and Type of Work ○ Qualifications/certifications required from the contractors ○ KPI's ○ Response Times ○ Payment Terms ○ Invoicing and Ordering Procedure 	

<ul style="list-style-type: none"> ○ Termination ○ Working Hours ○ Emergency Work ○ Contact Details ○ Waste Disposal ○ Scaffolding Requirements ○ Occupied or Void Properties ○ Presence & Location of Asbestos ○ Drawings ○ Volume of work expected 							
<p>Pricing information, to include:</p> <ul style="list-style-type: none"> ○ Current prices ○ Items to be priced (Single or total contract price) ○ Overtime ○ Extra Over Charges 							
<p>CDM: Is the project expected to last more than 30 working days or involve more than 500 person days?</p>	<table style="width: 100%; border: none;"> <tr> <td style="width: 15%; text-align: center; vertical-align: top;">Yes</td> <td style="width: 15%; text-align: center; vertical-align: top;">No</td> <td style="width: 70%; vertical-align: top;">Important Note: You must complete this section so that the H&S Team can determine whether your project is notifiable or not. Any questions, please contact H&S Team on Ext: 62077 or Ext: 52664.</td> </tr> <tr> <td style="text-align: center; vertical-align: middle;"><input type="checkbox"/></td> <td style="text-align: center; vertical-align: middle;"><input type="checkbox"/></td> <td></td> </tr> </table>	Yes	No	Important Note: You must complete this section so that the H&S Team can determine whether your project is notifiable or not. Any questions, please contact H&S Team on Ext: 62077 or Ext: 52664.	<input type="checkbox"/>	<input type="checkbox"/>	
Yes	No	Important Note: You must complete this section so that the H&S Team can determine whether your project is notifiable or not. Any questions, please contact H&S Team on Ext: 62077 or Ext: 52664.					
<input type="checkbox"/>	<input type="checkbox"/>						
<p>Any Additional Information</p>							
<p>Responsible Officer.....</p> <p>Signature.....</p> <p>Date.....</p>	<p><u>Declaration of Interests (Rule 6)</u> – All officers/persons must declare any interests which may affect the tender/contract process.</p> <p><u>Confidentiality (Rule 4 and Annexe 3)</u> – All officers/persons must be treat as confidential all matters relating to tenders and contracts before, during and after the process and discussions or correspondence must be restricted to those individuals who can evidence that they have a direct interest in the contract or officers authorised to administer the contract or tender process.</p>						

8.7 APPENDIX 7 – Authority for OGC Contract or Collaborative Arrangements

To be completed in all cases of procurement through OGC or collaborative arrangements. See also section 6.1.

OneWorld Business Unit and Object Code:	
Description of Goods/Services to be provided under the contract:	
Reason for this rather than alternative tendering methods:	
Originating Officer:	
Signature:	
Date:	
Authorised by Head of Procurement:	
Date:	
Authorised by Director of Finance, ICT and Governance:	
Date:	

8.8 APPENDIX 8 – Consultancy Agreement

DATED []

(1) NOTTINGHAM CITY HOMES LIMITED

and

(2)

CONSULTANCY AGREEMENT

THIS AGREEMENT is made the [date]

BETWEEN

Nottingham City Homes Limited, a company incorporated in England
(company number 5292636) whose registered office is at 14 Hounds Gate,
Nottingham NG1 7BA (“the Company”);
 (“The Consultant”)

RECITAL

The Company has approved the terms of this Agreement under which the Consultant is to provide services as an independent contractor to the Company. IT IS AGREED as follows:

1. Appointment

1.1 The Company hereby engages the Consultant to provide consultancy services, as detailed in schedule 1 attached to this Agreement, to the Company and the Consultant hereby agrees to provide such services upon the terms and conditions detailed below (“the Services”).

2. The Services

2.1 The Consultant will provide the Services on such dates and times as agreed between the Company and the Consultant.

2.2 The Consultant will provide the Services at a service level of high standard and which complies with prevailing standards of accepted business practices and ethics.

2.3 The Consultant may assign or sub-contract the provision of the Services to any other person, firm or company with the prior consent of.

3. Period of Consultancy

3.1 The period of this consultancy with the Company shall commence with effect from [date] and will continue for a fixed period of [] unless terminated earlier by either the Consultant or the Company by giving to the other X months’ written notice or in accordance with clause 9 below.

4. Fees and Expenses

4.1 The Company will pay the Consultant a fee at the rate of £[] per [hour/day/fixed sum] payable monthly in arrears, subject to the Consultant

- 4.2 The Consultant agrees to provide the Company with an invoice for fees and expenses due in respect of the Services supplied, on the X day of each month. The Company agrees to pay such invoice within X days of it being received and approved by

5. Relationship between the Parties

- 5.1 The relationship of the Consultant to the Company shall be that of an independent contractor and at no time must the Consultant hold themselves out as being an employee or agent of the Company.

6. Tax and Liabilities

- 6.1 The Consultant shall be responsible for all taxes, national insurance or other contributions which may be payable in respect of the fees payable under this Agreement. The Consultant agrees to indemnify the Company forthwith on demand by the Company in respect of any demands that may be made by the relevant authorities in respect of such tax, national insurance or other contributions, and any costs, claims, penalties, interest, expenses or proceedings arising out of or in connection with such taxes or contributions. If any payment under this clause 6.1 is subject to tax, the Company may demand in writing from the Consultant such amount (after taking into account any tax payable in respect of such amount) as will ensure that the Company receives and retains a net sum equal to the sum it would have received and retained had the payment not been subject to tax.
- 6.2 Upon the Company's reasonable request, the Consultant agrees to provide to the Company satisfactory evidence of registration with the Inland Revenue for tax and evidence that the Consultant has paid, by the due date, all tax and national insurance contributions in respect of any monies paid to the Consultant by the Company.

7. Insurance and Liabilities

- 7.1 The Consultant accepts liability for damage to property howsoever resulting from the Consultant's negligence where such negligence has arisen or arises in connection with the provision of the Services or in connection with any other activities undertaken by the Consultant pursuant to or for any purpose related to this Agreement.
- 7.2 The Consultant agrees to arrange, at the Consultant's own cost, for a policy of insurance to be in place covering all claims or proceedings instituted by any third party against the Company whether arising out of or connected

with the negligent, unlawful or defective provision of the Consultancy Services. This insurance policy shall cover all such claims, proceedings, costs, expenses and all other liabilities. The Consultant agrees to produce a copy of the insurance policy or policies and relevant renewal receipts for inspection, at the reasonable request of the Company.

8. Confidentiality

- 8.1 The Consultant shall neither during the period of this Agreement or any at any time after its termination, divulge or communicate to any person, company, business entity or other organisation, or use for the Consultant's own purposes or for any purposes other than those of the Company or through any failure to exercise due care and diligence, permit or cause any unauthorised disclosure of any trade secrets or confidential information relating to the Company. These restrictions shall cease to apply to any information which shall become available to the public generally otherwise than through the default of the Consultant.
- 8.2 For the purposes of this Agreement, "confidential information" shall mean any information relating to the Company or the business, prospective business, technical processes, computer software, intellectual property rights or finances of the Company including without limitation details of suppliers and their terms of business, details of customers and their requirements, the prices charged to and terms of business with customers, marketing plans and sales forecasts, financial information, results and forecasts (save to the extent that these are included in published audited accounts), any proposals relating to the acquisition or disposal of a company or business or any part thereof or to any proposed expansion or contraction of activities, details of employees and officers and of the remuneration and other benefits paid to them, information relating to research activities, inventions, secret processes, designs, formulae and product lines, which comes into the Consultant's possession and which the Company regards, or could reasonably be expected to regard, as confidential, whether or not such information is reduced to a tangible form or marked in writing as "confidential", and any and all information which has been or may be derived or obtained from any such information.
- 8.3 The Consultant acknowledges that all notes, memoranda, records, lists of customers and suppliers and employees, correspondence, documents, computer and other discs and tapes, data listings, codes, designs and drawings and other documents and material whatsoever (whether made or created by the Consultant or otherwise) relating to the business of the Company (and any copies of the same), shall be and remain the property of the Company and shall be handed over by the Consultant to the Company on demand and in any event on the termination of this Agreement and the

Consultant shall certify that all such property has been so handed over and that no copies or extracts have been retained.

9. Termination of the Agreement

9.1 The Company may by notice in writing terminate this consultancy agreement forthwith if the Consultant:

- Commits a serious breach of any of the Consultant's obligations to the Company;
- Fails, or continues to fail, or refuses to provide the Services to the standards or time scales reasonably required by the Company;
- Acts in any way which materially prejudices the interests of the Company; or
- Is incapable of providing the Services for reasons of ill health or other incapacity for an aggregate period of [] days in any [] period when services are requested or would otherwise have been requested but for the Consultant's ill health or incapacity.

9.2 Upon termination of this Agreement, the Company shall pay the Consultant, fees to the date of termination. The Company may, in its absolute discretion, pay the Consultant compensation in lieu of any notice of termination.

9.3 Upon expiry of this Agreement or on termination of this Agreement, the Consultant shall return to the Company all property belonging to the Company or its clients, which is in the Consultant's possession or control and the Consultant shall not without the written consent of the Company retain any copies thereof.

10. Non-exclusivity of Services

10.1 The Company hereby acknowledges that nothing in this Agreement shall be taken to restrict the Consultant from providing any similar consultancy services to any other person

11. General

11.1 Any notice required by this Agreement to be given by either party to the other shall be in writing and shall be served by sending the same by registered post or recorded delivery to the address of the other party given herein or to such other address as that party shall have notified in writing to the other party as their address for such service and any receipt issued by the postal authorities shall be conclusive evidence of the fact and date of posting of any such notice.

11.2 This Agreement contains the entire understanding between the parties and supersedes any previous agreements or undertakings.

11.3 The terms of this consultancy agreement shall be governed by English law and both the Consultant and the Company submits to the exclusive jurisdiction of the English Courts.

SIGNED AS A DEED by NAME OF EMPLOYEE

For and on behalf of NOTTINGHAM CITY HOMES LTD

In the presence of: NAME OF WITNESS

SIGNED AS A DEED by NAME OF INDIVIDUAL

In the presence of: NAME OF WITNESS

SCHEDULE 1

THE SERVICES

[]

8.9 APPENDIX 9 – Number of Quotes & Tenders Required

The table below sets out the number of quotes or tenders which must be requested and obtained for the required estimated levels of expenditure as set out in sections 3.1 and 4.4 of the Company's Tender and Contract Procedure Rules.

The requirements set out in the matrix shall be adhered to at all times and failure to do so by any employee will constitute a breach of the Company's Tender and Contract Procedure Rules as set out in section 1.6.

EXPENDITURE LEVEL ¹	REF	QUOTES OR TENDERS	NUMBER TO BE REQUESTED	NUMBER TO BE OBTAINED
Less than £500 ²	3.1.1	Quotes	N/A	N/A
Between £500 and £4,999	3.1.1	Quotes	3	2
Between £5,000 and £9,999	3.1.1	Quotes	4	3
Between £10,000 and £49,999	4.4.1	Tenders	3	1 *
Above £50,000	4.4.1	Tenders	4	1 *
Above EU levels ³	4.4.1 & 8.2	Tenders	5	1 *

* – There is no stipulation as to how many tenders must be obtained following compliance with the Rules regarding the tender process. However, if only 1 tender is received ROs shall ensure compliance with Rule 4.16.9.

¹ – Quotes and tenders shall be obtained based on estimated expenditure. If quotes received are above the original threshold followed then ROs shall request and obtain additional quotes to ensure compliance with the requirements of the table above.

² – Rule 3.1.1 that ROs do not have to obtain quotes where expenditure is below £500 does not negate the RO's responsibility to ensure that Value for Money is secured and obtained, without exception, in relation to the commitment and disbursement of Company's funds.

³ – The thresholds set by EU Directives vary depending on the purchasing Company and the type of contract. Therefore, for all contracts estimated to be in excess of £50,000 APPENDIX 2 – EU Thresholds and Categories of Services should be reviewed.

8.10 APPENDIX 10 – Contract Authorisation Limits

The table below sets out the prescribed limits, thresholds and authorisation levels as set out in section 4.16 (Acceptance of Tenders).

The authorisation limits set out in the matrix shall be adhered to by the respective senior managers at all times and failure to do so will constitute a breach of the Company's Tender and Contract Procedure Rules as set out in section 1.6.

EXPENDITURE TYPE	BOARD	CHIEF EXECUTIVE	DIRECTOR
Contract	Equal to or more than £250,000	Equal to or more than £150,000	From £50,000 to £149,999

The required authorisation levels, and the seniority of the authorising officers, increase as the value of contract approved increases. The limits are aligned to those established for approving orders in the Financial Regulations (Part 2 of the Company's Standing Orders).

8.11 APPENDIX 11 – Tender and Contract Procedure Rules’ Updates and Amendments

Updated by	Updated in	Detail of Updates, Changes and Amendments	Status
Julie Hadfield – Head of Finance	July 2007	Total new Standing Orders	Approved by the Board 26 July 2007
Steve Everson – Acting Director of Finance	April 2008	General review and revision of the existing Rules.	Approved by the Board 15 May 2008
Darren Phillips – Head of Finance (Company)	June 2010	General review and revision of the existing Rules.	Approved by the Board 29 July 2010