

## NORTH YORKSHIRE COUNTY COUNCIL

## AUDIT COMMITTEE

3<sup>rd</sup> DECEMBER 2015

## REVIEW OF THE CONTRACT PROCEDURE RULES

## Report of the Corporate Director – Strategic Resources

**1.0 PURPOSE OF REPORT**

- 1.1. To inform Members on the latest thinking relating to potential changes to the Contract Procedure Rules (the Rules).

**2.0 BACKGROUND**

- 2.1. According to the Audit Committee Terms of Reference the Audit Committee is to review and recommend to the Executive, changes to the Contract Procedure Rules.
- 2.2. A comprehensive review of the Rules takes place following County Council elections every four years; however it is recognised that in the interim there is a need to ensure the Rules are kept up to date for organisational and legal reasons.
- 2.3. This report identifies specific changes to the Rules, set out in **Appendix 1**, for subsequent referral to the Executive. The complete proposed Contract Procedure Rules are set out in **Appendix 2**.
- 2.4. This report seeks to give members of the Audit Committee an overview of the thinking behind the proposed changes which will take effect from 1<sup>st</sup> April 2016.

**3.0 PROPOSED FUTURE CHANGES**

- 3.1. The Contract Procedure Rules govern how we procure goods, services and works and have over recent years been reviewed annually without significant change. Most changes arise in relation to OJEU procurement processes in response to changes in The Public Contract Regulations. The latest significant amendments were implementation of The Public Contract Regulations 2015, earlier this year.
- 3.2. The revised Public Contract Regulations 2015 aim to:
- Simplify the procurement process
  - Speed up procurement process

- Provide a more cost effective procurement processes
- Promote sustainable procurement
- Drive supplier engagement and innovation
- Provide increased flexibility in relation to certain social and other specific service contracts covered by the light touch regime (LTR)
- Open competition to SMEs through removal of the Pre-Qualification Questionnaire for below threshold procurement exercises.

3.3. The Corporate Procurement Strategy sets the vision “to be outcome focused ensuring that all Commissioning, Procurement and Contract Management activity delivers Value for Money and efficiencies for the Council”. The recent changes to The Public Contract Regulations 2015 support the Council in delivering this vision and need to be embraced within the Rules to ensure the flexibilities apply to non-OJEU procurements.

## **4.0 KEY CHANGES**

### **4.1. Financial thresholds and associated procurement process**

4.1.1. Section 2.10.1 of the revised Rules (**Appendix 2**) sets out the main changes related to the financial thresholds. They are summarised below:-

#### **Goods and Services**

4.1.2. Currently for spend up to £5,000 there is no mandatory process, however Officers must ensure value for money. Under the proposed changes there will be no mandatory process for spend up to £25,000. However if Officers choose to apply this rule they must capture the rationale for not seeking quotations, including how they know the direct award will deliver value for money. This will be captured in a Best Value form. Audit will undertake regular dip sampling related to the application of this Rule to ensure compliance.

4.1.3. It is proposed that for spend between the values of £25,000 up to the OJEU level (£172,514), bids must be sought using the e-tendering system. These will be open for any qualified supplier to bid on, and will allow greater chances for local suppliers and SMEs to bid for our contracts at this level.

#### **Works**

4.1.4. Specifically in relation to Works procurement it is proposed that for spend between the values of £25,000 up to £4,322,012 bids must be sought using the e-tendering system. These will be open for any qualified supplier and also support SMEs and the local economy. .

4.1.5. Previously any works procurement above £100,000 would result in a tender. Feedback from local Contractors has informed us the tendering process is

seen as overly bureaucratic; time consuming and involves too much paperwork. Contractors want to see a simplified, streamlined process. The revised approach supports this ethos.

- 4.1.6. Members should note that due to the category sourcing strategy in relation to Works procurements the Council has a well-established route to market for this area of spend. The majority of Works expenditure is delivered through a combination of Framework Agreements covering a range of services from small works, larger complex works through to routine maintenance. As such it would only be in exceptional circumstances where we would envisage a bid process taking place outside of a further competition through the Framework Agreements.
- 4.1.7. The way in which the Contractor Framework Agreements are set-up ensures that the most economically advantageous Contractors are awarded places on the initial Framework. The Council then ensures value for money on a case by case basis by running a further competition where appropriate to do so. In other instances the Framework Agreement may be single supplier, however continuous market engagement and contract management ensures value for money is constantly reviewed.

### **Light Touch Regime**

- 4.1.8. The new Light Touch regime (LTR) is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition e.g. some social, health and educational services.
- 4.1.9. It is proposed that in relation to procurements with a value of £25,000 - £625,050 which fall into the new LTR bids must be sought using the e-tendering system. These will be open for any qualified supplier to bid on, and will allow greater chances for local suppliers and SMEs to bid for our contracts at this level.
- 4.1.10. Previously any Part B service<sup>1</sup> procurements above £100,000 would be subject to a tendering process. Generally, due to the nature of the services which are governed by this category, such as social care, the tendering process does not necessarily deliver the flexibilities required, in terms of timescales in particular.
- 4.1.11. Due to the nature of the services there will be very few scenarios where the aggregate contract spend in an area such as social care falls below £625,050 and therefore the procurement will be subject to The Public Contract Regulations 2015, Social and Other Specific Services.

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<sup>1</sup> Part B services have been removed under the Public Contract Regulations 2015. The Light Touch Regime replaces what was "Part B Services" under the Public Contract Regulations 2006 although the number of services that are covered by LTR is reduced when compared to the previous Part B. This is to ensure that contracts which are of cross boarder interest are exposed to EU competition.

4.1.12. The LTR empowers public sector organisations to take radical new approaches to the commissioning of areas such as social care. Due to the category sourcing strategy for social care, both Health and Adult Services (HAS) and Children and Young People's Service (CYPS) have established routes to market mainly via Approved Lists and Framework Agreements. The operational model in place to commission work via these mechanisms ensures that value for money is delivered on a case by case basis taking account of the client needs. It should be noted that an added complexity to the category of social care is individual choice which the new LTR enables Councils to take account of. It would only be in exceptional circumstances where procurement would take place on an ad hoc basis.

## **Grants**

4.1.13. Both the Contract Procedure Rules and Finance Procedure Rules are currently largely silent around grants, and in particular the decision making process carried out by officers around whether a Grant would be a preferable means to achieving the Councils objectives, rather than following a competitive Bid process.

4.1.14. This is now addressed under section 21 of the Contract Procedure Rules, and will be accompanied by additional guidance for Officers in the Procurement Manual.

4.1.15. Where the value of a Grant exceeds £25,000, there is discretion to conduct a competitive application process for the award of that Grant if doing so demonstrates best value for the Council. If there is no competitive application process then the Best Value Form must be completed to capture the rationale for the decision.

4.1.16. Where the value of a Grant exceeds the relevant EU Threshold, the Gateway Process must be followed. This will provide additional scrutiny and assurance that value for money is attained and the required outcomes are delivered.

## **4.2. Transparency**

4.2.1. We will continue to ensure transparency of forthcoming expenditure for contracts using the Forward Procurement Plan (FPP) which is published to all potential suppliers to raise awareness of opportunities to work with the council. Previously the FPP detailed all contracts above £10,000. It is proposed that all expenditure is now included in the FPP.

4.2.2. With the introduction of the national Contracts Finder system, where appropriate, the Council will publish all contracting opportunities on this system.

4.2.3. Where the procurement is subject to the OJEU threshold the opportunity will be published in the official journal. As such all of the above will ensure openness and transparency.

### **4.3. Financial thresholds and internal Gateway approval**

- 4.3.1. Under the proposed changes Officers will only be required to complete the Gateway process for procurement in line with the relevant OJEU threshold e.g.
- Goods and Services £172,514
  - Social and Other Specific Services £625,050
  - Works £1,000,000
- 4.3.2. Under the previous Rules all procurements over £100,000 were subject to the Gateway process. This aligns the Gateway process to the Public Contract Regulations 2015 financial thresholds<sup>2</sup>, the point at which the OJEU tendering process applies.
- 4.3.3. As outlined in section 4.1 above, due to the aggregated contract value on Social and Other Specific Services and Works procurements the overarching route to market will be subject to the Gateway process.

### **4.4. Small and Medium Enterprise (SMEs)**

- 4.4.1. Through our procurement initiatives, including the Corporate Procurement Strategy and some of the key changes outlined within this report, we are ensuring that SMEs have access to NYCC contract opportunities, making it easier for them to do business with us and therefore aiming to increase spend either directly or in supply chains, which goes to SMEs and the local economy.
- 4.4.2. Section 4.2 of the report outlines how we will ensure transparency of the opportunities. We will continue to publish the FPP quarterly, detailing the procurement pipeline, giving businesses the confidence and time to invest in skills and capabilities to deliver the contracts. This will also enable SMEs to identify opportunities for collaborative working to deliver contracts.
- 4.4.3. Further to this, through the commissioning and procurement cycle we are engaging SMEs and voluntary and community sector organisations through early market engagement. This helps develop the overarching strategy and ensures that we work together to take innovative approaches to delivering services which meet future customer and business needs.
- 4.4.4. Simplifying the process and operating to more flexible EU procurement rules where applicable will also support SMEs as the process is less bureaucratic; time/resource intensive and less costly.

## **5.0 RECOMMENDATIONS**

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<sup>2</sup>With the exception of Works procurements where the Gateway process will take effect for spend of £1m+.

- 5.1. Members of the Audit Committee are requested to note the contents of the report and to offer any observations in advance of a formal request for changes to the Rules.

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and

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17 November 2015

Appendix 1

CONTRACT PROCEDURE RULES

SUGGESTED AMENDMENTS

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Not currently included	<b>Best Value Form</b> means the form to be completed to capture the rationale for not seeking bids in accordance with <b>Rule 8.1</b>	To provide clarity.
		<b>Contract Register</b> means the register of Contracts maintained by the Council as set out in <b>Rule 17.8</b>	<b>Contract Register</b> means the register of Contracts maintained by the Council as set out in <b>Rule 16.8</b>	To provide clarity.
		Not currently included	<b>Directors Recommendation</b> means a written record of the decision and justification to apply one of the exceptions set out in <b>Rule 15.1</b> to be signed and kept by the relevant Director.	To provide clarity.
		<b>FPP</b> means the Forward Procurement Plan maintained as described in Rule 17.5.	<b>FPP</b> means the Forward Procurement Plan which outlines all future procurement requirements of the Council	To provide clarity.
		<b>Framework Agreement</b> means an agreement with one or more contracting authorities and one or more economic operator which establishes an arrangement for:	<b>Framework Agreement</b> means an agreement with one or more contracting authorities and one or more economic operator which establishes an arrangement for:	New definition to take account of the Public Contract Regulations 2015.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Not currently included	<b>ITB</b> means an Invitation to Bid.	To provide clarity.
		Not currently included	<b>Key Decision</b> means a decision made in connection with the discharge of a function which is the responsibility of the Executive as set out in Article 13.03(b) of the Constitution [ <a href="#">insert hyperlink</a> ]	To provide clarity.
		Not currently included	<b>OJEU Tender</b> means the procurement process to be followed where the estimated whole life value of a Contract exceeds the relevant EU Threshold	To provide clarity.
		Not currently included	<b>Waiver Request Form</b> means the prescribed form to be completed when requesting a waiver in accordance with <b>Rule 15.4</b>	To provide clarity.
1.2 (e)	1.2 (e)	Directors, the CD-SR and the ACE(LDS) shall be taken to include such Officers as are designated by those officers to undertake the duties and responsibilities set out in these Rules, except in the case of the following Rules:-  (i) Director - <b>Rules 8.6, 15.1(d), (g) and (h), 15.3(b) and 17.1</b> (ii) CD-SR - <b>Rules 2.1, 2.4, 2.5, 8.6, 15.1(h), 15.3(b), 15.4, 15.5, 15.7, 16.2 and 17.1</b> (iii) ACE(LDS) - <b>Rules 2.1, 2.4, 2.5, 8.6, 15.3(b), 15.4, 15.5, 15.7, and 17.1</b>	Directors, the CD-SR and the ACE(LDS) shall be taken to include such Officers as are designated by those officers to undertake the duties and responsibilities set out in these Rules, except in the case of the following Rules:- (i) Director - <b>Rules 8.6, 15.1(d), (g) and (h), 15.3(b) and 17.1</b> (ii) CD-SR - <b>Rules 2.1, 2.4, 2.5, 8.6, 15.1(h), 15.3(b), 15.4, 15.5, 15.7, 16.2 and 17.1</b> (iii) ACE(LDS) - <b>Rules 2.1, 2.4, 2.5, 8.6, 15.3(b), 15.4, 15.5, 15.7, and 17.1</b>	To amend references to the Rules.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
2.5	2.5	The CD-SR and the ACE(LDS) have produced a Procurement Manual which provides detailed guidance on procurement techniques and the effect of the Rule. The Procurement Manual also sets out important issues to be considered in the procurement context. These Rules should be read in conjunction with the Procurement Manual.	The CD-SR and the ACE(LDS) have produced a Procurement Manual which sets out important issues to be considered in the procurement context. These Rules should be read in conjunction with the Procurement Manual.	To remove repetition. The glossary provides a definition of the Procurement Manual.
2.9	2.10	Wherever possible and appropriate procurement shall be undertaken using the standard precedent documents contained in the Procurement Manual applying to PQQ's, ITT's or to submit quotations. Wherever alternative documents are to be used they must be approved by ACE(LDS) in consultation with CPG(or the DPC) as appropriate.	Wherever appropriate procurement shall be undertaken using the standard precedent documents contained in the Procurement Manual applying to PQQ's, ITT's or ITBs. Wherever alternative documents are to be used they must be approved by the Director and where appropriate the ACE(LDS).	To provide clarity. To comply with the Gateway process. All documentation is approved by the DPC.
N/A	2.11	Not currently included	Where the total Contract value for procurement is within the values in the first column of Tables 1-3, below, the award procedure in the second column must be followed.	
N/A	Table 1 -3	Not currently included	Added a table which outlines minimum requires related to financial thresholds.	To provide clarity. To provide improved flexibilities for Procurement staff.
4.2	4.2	Directors shall ensure that a written record of the decision to procure a Contract is made and, where such a decision comprises a Key Decision under the Constitution, Directors shall ensure that it is entered on to the Forward Plan and treated as a	Directors shall ensure that a written record of the decision to procure a Contract is made in line with the Gateway process where <b>Rule 17</b> applies. Where such a decision comprises a Key Decision under the Constitution, Directors shall ensure that it	To provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Key Decision in all respects.	is entered on to the Forward Plan and treated as a Key Decision in all respects.	
5.1	5.1	Every contract exceeding £100 shall be evidenced in writing (by the use of a purchase order form exchange of correspondence or other written medium).	Every contract shall be evidenced in writing (by the use of a purchase order exchange of correspondence or other written medium).	To make it explicate that all purchases should be covered by a form of contract.
5.2	5.2	Every contract exceeding £25,000 in value shall be documented by a written form of agreement. Wherever appropriate and possible, such written agreements shall be made on the basis of terms and conditions agreed by the ACE(LDS). Such terms and conditions may be incorporated into standard order conditions. The Council may accept different terms and conditions proposed by a Contractor provided that the advice of the ACE(LDS) as to their effect has been sought and considered.	Wherever appropriate, and for all Contracts exceeding £25,000 in value, such written agreements shall be made on the basis of terms and conditions agreed by the ACE(LDS). Such terms and conditions may be incorporated into standard order conditions. The Council may accept different terms and conditions proposed by a Contractor provided that the advice of the ACE(LDS) as to their effect has been sought and considered.	To provide clarity.
5.3	5.3	<p>The written form of agreement for all contracts exceeding £25,000 in value must clearly specify the obligations of the Council and the Contractor and shall include:-</p> <p>(a) the work to be done or the Supplies, Services or Social and Other Specific Services to be provided</p>	<p>The written form of agreement must clearly specify the obligations of the Council and the Contractor and shall include:-</p> <p>(a) the work to be done or the Supplies, Services or Social and Other Specific Services to be provided</p> <p>(b) the standards which will apply to</p>	To provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>(b) the standards which will apply to what is provided</p> <p>(c) the price or other consideration payable</p> <p>(d) the time in which the Contract is to be carried out</p> <p>(e) the remedies which will apply to any breach of Contract.</p>	<p>what is provided</p> <p>(c) the price or other consideration payable</p> <p>(d) the time in which the Contract is to be carried out</p> <p>(e) the remedies which will apply to any breach of Contract.</p>	
5.4	N/A	Where considered appropriate by the CD-SR, term contracts and framework contracts may include a financial limit above which value, work to be done or Supplies, Services or Social and Other Specific Services to be supplied shall be subject to a separate procurement exercise in accordance with these Rules.	Delete	This relates to practicalities of procurement and does not require a specific rule.
5.5	5.4	<p>The written form of agreement for all contracts exceeding £25,000 in value must include the following or equivalent wording:-</p> <p>(a) "If the Contractor:-</p> <p>(i) Has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this Contract or any other Contract with the Council, or</p>	<p>The written form of agreement for all Contracts exceeding £25,000 in value must include the following or equivalent wording:-</p> <p>(a) "If the Contractor:-</p> <p>(i) Has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this Contract or any other Contract with the Council, or</p>	To provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>(ii) Has committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010, or</p> <p>(iii) Has committed an offence under Section 117 (2) of the Local Government Act 1972</p> <p>the Council may terminate the Contract immediately and will be entitled to recover all losses resulting from such termination”.</p>	<p>(ii) Has committed any offence under the Bribery Act 2010, or</p> <p>(iii) Has committed an offence under Section 117 (2) of the Local Government Act 1972</p> <p>the Council may terminate the Contract immediately and will be entitled to recover all losses resulting from such termination”.</p>	
6.1	6.1	Every written Contract must be either signed or sealed in accordance with this Rule and where Contracts have a value exceeding £50,000 they <u>must</u> be either sealed, or signed by two Officers as described below.	Every written Contract must be either signed or sealed in accordance with this Rule.	To provide clarity. Further amendments under Rule 6 provide further clarity on which Officers can sign contracts.
6.2.1	6.3	<p>The ACE(LDS) also authorises such Contracts to be signed by Directors (or by an Officer authorised by a Director to sign on the Director’s behalf) up to and including £500,000 provided that:-</p> <p>(a) appropriate authority exists for the Council to enter into the Contract, and</p> <p>(b) the Contract is either:-</p> <p>(i) in a nationally recognised form, or</p> <p>(ii) a standard form prepared or approved by the ACE(LDS), or</p> <p>(iii) is otherwise in a form approved by the ACE(LDS); and</p> <p>(c) any variations to approved forms of Contract must themselves be approved by the ACE(LDS),</p>	<p>The ACE(LDS) also authorises such Contracts to be signed as outlined in <b>Rule 2.11</b>, Table 1-3 provided that:-</p> <p>(a) appropriate authority exists for the Council to enter into the Contract, and</p> <p>(b) the Contract is either:-</p> <p>(i) in a nationally recognised form, or</p> <p>(ii) a standard form prepared or approved by the ACE(LDS), or</p> <p>(iii) is otherwise in a form approved by the</p>	To provide clarity on which Officers are authorised to sign contracts.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		whether or not they are effected by amending the Contract itself or by correspondence	ACE(LDS); and  (c) any variations to approved forms of Contract must themselves be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence	
6.2.2	N/A	Contracts that exceed £500,000 shall be signed by:  (a) the ACE(LDS) (or a Legal and Democratic Services' Officer authorised by him); and (b) an authorised signatory in the relevant Directorate (or another Legal and Democratic Services' Officer authorised by the ACE(LDS)).	Delete	Further amendments to Rule 6 and the additional information added at Rule 2.11 provides clarity on signing of contracts.
6.2.3	6.3	Only the ACE(LDS) (or a Legal and Democratic Services' Officer authorised by the ACE(LDS)) may seal a Contract on behalf of the Council, in each case being satisfied that there is appropriate authority to do so.	Only the ACE(LDS) (or a Legal and Democratic Services' Officer (LDSO) authorised by the ACE(LDS)) may seal a Contract on behalf of the Council, in each case being satisfied that there is appropriate authority to do so.	To provide clarity and re-numbering.
7.1	7.1	Directors (in consultation with the CD-SR) shall consider whether to include provision for the payment of liquidated damages by a Contractor for breach of Contract in all contracts which exceed £100,000 in value. Such consideration shall be recorded in the Gateway Processes.	Where appropriate Directors (in consultation with the CD-SR) shall consider whether to include provision for the payment of liquidated damages by a Contractor for breach of Contract. Such consideration shall be recorded in the Gateway Process (Stage 1).	To provide clarity.
8.1	8.1	Where the estimated value of a contract is £5,000 or less the invitation of quotations is not mandatory, but written quotations should be invited where appropriate and best value should always be	Where the estimated value of a Contract is £25,000 or less the invitation of Bids is not mandatory, but written Bids should be invited where appropriate and best value should always	To increase the threshold for Officers being able to demonstrate best value without the need to complete

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		sought.	be sought. If an Officer is not seeking three Bids then the Best Value Form must be completed to capture the rationale for this decision.	<p>a bid process as outline in Rule 8.2.</p> <p>To ensure that where Officers are not seeking bids a rational for this is captured.</p> <p>To provide flexibility.</p>
8.2	8.2	If the estimated value of a contract exceeds £5,000 but is less than £100,000 at least three written quotations must be invited from suitable potential Contractors. The estimated value of the Contract shall be recorded in writing prior to quotations being sought. Quotations with a value exceeding £5,000 should be invited using the E-Sourcing System and quotations above £25,000 <b>must</b> be invited using the E-Sourcing system.	If the estimated value of a Contract exceeds £25,000 but is less than the appropriate EU Threshold, Bids must be invited from all potential Contractors in accordance with <b>Rule 2.11, Tables 1-3</b> . A notice advertising the opportunity shall be published through the E-Sourcing System and on Contracts Finder and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract, how the ITB documents may be obtained and the closing date for receipt of Bids by the Council.	<p>To provide flexibility and clarity.</p> <p>Contract value is recorded on the evaluation model and on the FPP this relates to BAU process.</p>
8.3	N/A	If a Director, in consultation with the DPC, considers it to be appropriate that any ITQ shall be available to all potential Participants then a notice advertising the opportunity shall be published through the E-Sourcing System and on Contracts Finder and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract.	Delete	This detail is more appropriate for the Procurement Manual and will be reflected in this practical guidance document.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		The notice shall specify brief details of the Contract, how the ITQ documents may be obtained and the closing date for receipt of quotations by the Council.		
8.4	8.3	All potential Contractors invited to submit quotations shall be provided in all instances with identical information and instructions. Where considered appropriate, Directors may permit potential Contractors who have been selected to submit quotations under <b>Rule 8.2</b> to also submit variant quotations (i.e. quotations which do not comply with some or all of the requirements of the primary quotation). The same opportunity to submit variant quotations must be given to all potential Contractors	All potential Contractors invited to submit Bids shall be provided in all instances with identical information and instructions. Where considered appropriate, Directors may permit potential Contractors who have been invited to submit Bids under <b>Rule 8.2</b> to also submit variant Bids (i.e. Bids which do not comply with some or all of the requirements of the primary Bid). The same opportunity to submit variant Bids must be given to all potential Contractors.	Amended reference from quotation to bid and re-numbering only.
8.5	8.4	<p>A written quotation may only be considered if:-</p> <p>(a) it has been received electronically through the E-Sourcing System, or</p> <p>(b) it has been received in a sealed envelope marked "Quotation" and indicating the subject matter of the quotation and</p> <p>(c) it has been opened after the expiry of the deadline for submissions and at the same time as other quotations for the same subject</p>	<p>A written Bid may only be considered if:-</p> <p>(a) it has been received electronically through the E-Sourcing System, or</p> <p>(b) (where permitted in exceptional circumstances) it has been received in a sealed envelope marked "Bid" and indicating the subject matter of the Bid and</p> <p>(c) it has been opened after the expiry of the deadline for submissions and at the same time as other Bids for the same subject matter in the presence of at least two Officers authorised to open Bids..</p>	<p>To provide clarity.</p> <p>Amended reference from quotation to bid.</p> <p>Re-numbering.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
8.6	8.5	Before quotations of a value in excess of £25,000 are requested it must be recorded in writing whether the lowest price or the most economically advantageous quotation should be accepted. Where both price and quality are to be factors (i.e. where the most economically advantageous quotation applies) the quality criteria must be identified and the weighting between price and quality established and recorded before quotations are requested. The criteria should be stated in the request for quotation sent to suppliers.	Before Bids with a value in excess of £25,000 are requested the evaluation criteria must be recorded in writing in the ITB evaluation model. The evaluation criteria must be identified and the weighting between price and quality established and stated in the request for Bids sent to Participants.	To provide clarity. Amended reference from quotation to bid. Re-numbering.
8.7	N/A	Price/quality quotation evaluation models shall be lodged with Internal Audit before any quotations are opened. The Director shall evaluate quotations using the evaluation model lodged with Internal Audit.	Delete.	Evaluation models are held on YORtender and auditable. Rule 8.5. ensures evaluation models are prepared prior to submission of bids.
8.8	8.6	If a quotation other than the lowest or the most economically advantageous quotation (as the case may be) is to be accepted, the written approval of the Director (in consultation with the CD-SR or if the relevant Director is the CD-SR, in consultation with the Chief Executive) shall be sought and obtained before the quotation is accepted.	If a Bid other than the most economically advantageous Bid is to be accepted, the written approval of the Director (in consultation with the CD-SR or if the relevant Director is the CD-SR, in consultation with the Chief Executive) shall be sought and obtained before the Bid is accepted.	To provide clarity. Most economically advantageous bid covers price only as well as price and quality. Re-numbering.
8.9	8.7	A quotation for a price in excess of £100,000 may be accepted if (and only if):-  (a) the original documented estimated price was less than £100,000 and (b) the price quoted does not exceed that	A Bid cannot be accepted where the value exceeds the relevant EU Threshold. If the value of the Bid exceeds the relevant EU Threshold a Director must seek tenders in accordance with <b>Rules 10 and 11.</b>	To provide clarity. Re-numbering.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>original documented estimated price by more than 10% and</p> <p>(c) the written approval of the Director (in consultation with the CD SR) has been obtained.</p> <p>If the conditions at (a), (b) and (c) are not met, Directors must seek tenders in accordance with the Rule 9 and 10.</p>		
8.10	N/A	Where a quotation involves payment to the Council, the provisions of <b>Rules 8.5 and 8.7</b> shall apply except that the word “lowest” shall be replaced by the word “highest” in these paragraphs.	Delete	To provide clarity. Amendments to Rule 8. Means Rule 8.10 is no longer applicable.
8.11	8.9	Quotations may be altered only in accordance with <b>Rules 13.1 and 13.2.</b>	Bids may be altered only in accordance with <b>Rule 9.</b>	To provide clarity – change of Rule reference.
8.12	8.8	Before a Contract is awarded after a quotation exercise such steps shall be taken, in conjunction with the CD-SR, as are reasonably necessary (having regard to the subject matter, value, duration of the Contract and other relevant factors) to complete a risk assessment of the potential Contractor’s financial stability.	Before a Contract is awarded after a Bid exercise such steps shall be taken by the Responsible Officer, in conjunction with the CD-SR, as are reasonably necessary (having regard to the subject matter, value, duration of the Contract and other relevant factors) to complete a risk assessment of the potential Contractor’s financial stability.	Amended reference from quotation to bid. Re-numbering.
13.0	9.0	<p><b>POST TENDER NEGOTIATION AND CLARIFICATION</b></p> <p>13.1 Post tender negotiations may not be undertaken where the value of the Contract</p>	<p><b>POST BID NEGOTIATION AND CLARIFICATION</b></p> <p>9.1 Post Bid negotiations may not be undertaken where the value of the Contract</p>	To provide clarity. Due to changes in thresholds negotiations can only be

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>exceeds the relevant EU Threshold.</p> <p>13.2 Post tender negotiations with selected tenderers shall only be carried out where:-</p> <p>13.2.1 post tender negotiations are permitted by law; and</p> <p>13.2.2 the Director in consultation with the CPG considers that added value may be obtained; and</p> <p>13.2.3 that post tender negotiations are to be conducted by a team of suitably experienced officers approved by the Director and who have been trained in post tender negotiations; and</p> <p>13.2.4 a comprehensive, written record of the negotiations is kept by the Council; and</p> <p>13.2.5 a clear record of the added value to be obtained as a result of the post tender negotiations is incorporated into the Contract with the successful Participant.</p> <p>13.3 <b>Rules 13.1 and 13.2</b> shall not operate to prevent clarification of all or part of any tender to the extent permitted by law and where such clarifications are sought the provisions of <b>Rules 13.2.3 and 13.2.4</b> shall apply, except that the word "clarification" shall be substituted for the word "negotiation" in these Rules.</p>	<p>exceeds the relevant EU Threshold. If the value of a Bid exceeds the relevant EU Threshold, the Director must invite tenders in accordance with <b>Rules 10 and 11</b>.</p> <p>9.2 Post Bid negotiations with selected Participants shall only be carried out where:-</p> <p>(a) post Bid negotiations are permitted by law; and</p> <p>(b) the Director in consultation with the DPC considers that added value may be obtained; and</p> <p>(c) post Bid negotiations are conducted by a team of suitably experienced Officers approved by the Director who have been trained in post Bid negotiations; and</p> <p>(d) a comprehensive, written record of the post Bid negotiations is kept by the Director; and</p> <p>(e) a clear record of the added value to be obtained as a result of the post Bid negotiations is incorporated into the Contract with the successful Participant.</p> <p>9.3 <b>Rules 9.1 and 9.2</b> shall not operate to prevent clarification of all or part of any Bid to the extent permitted by law and where such clarifications are sought the provisions of <b>Rules 9.2 (c) and 9.2 (d)</b> shall apply, except that the</p>	<p>undertaken in relation to bids.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
			word "clarification" shall be substituted for the word "negotiation" in these Rules.	
9.1	N/A	If the estimated value of the contract is £100,000 or more electronic tenders shall be invited in accordance with the provision of this Rule.	Delete	To provide clarity and take account of amended thresholds.
9.2	10.1	If the estimated value of the Contract exceeds the relevant EU Threshold the additional requirements for OJEU Procurements, set out in <b>Rule 10.3</b> , shall be followed.	Tenders for Contracts which exceed the EU Threshold shall be invited and awarded in accordance with the PCRs and as prescribed in <b>Rule 10 and 11</b> .	To provide clarity in light of changes to thresholds.  Re-numbering.
9.3	N/A	Before Directors invite tenders it shall be recorded in writing for all Contracts whether the Contract will be awarded on the basis of price or the Most Economically Advantageous Tender (MEAT), a combination of price and quality.	Delete. Covered by amended wording to the revised Rule 10.2 below.	To provide clarity.
9.4	10.2	If a Contract is to be awarded on the basis of the MEAT, the criteria to be used in the assessment of the quality elements of the tenders and the weighting between price and quality shall be established and recorded in writing before tenders are invited. For all Contracts, the tender assessment criteria, sub-criteria and weightings shall be stated in the ITT.	Before an OJEU Tender is requested the evaluation criteria to be applied to the OJEU Tender must be recorded in writing in the ITT evaluation model. The evaluation criteria must be identified and the weighting between price and quality established and stated in the ITT sent to Participants.	To provide clarity.
N/A	10.3	Not currently included.	Irrespective of the procurement process being undertaken an OJEU notice must be published through the E-Sourcing system.	To provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
9.5	N/A	If a Contract is to be awarded on a price only basis it shall be recorded whether the award will be made on the basis of the lowest price or any other tendered price. Where a tender involves payment to the Council, the provisions of this Rule shall apply except that the word “lowest” shall be replaced by the word “highest”.	Delete	To provide clarity in light of changes within the new Rule 10.
9.6	10.4	All Participants invited to submit tenders shall be provided with identical instructions and information.	All Participants invited to submit OJEU Tenders shall be provided in all instances with identical instructions and information.	To provide clarity.
9.7	10.5	Where considered appropriate, a Director may, in consultation with the DPC, permit Participants to submit variant tenders (i.e. tenders which do not comply with some or all of the requirements of the primary tender). The same opportunity to submit variant tenders shall be given to all Participants. Variant tenders shall only be considered if the Participant also submits a compliant primary tender.	Where considered appropriate, a Director may, in consultation with the DPC, permit Participants to submit variant OJEU Tenders (i.e. tenders which do not comply with some or all of the requirements of the primary tender). The same opportunity to submit variant OJEU Tenders shall be given to all Participants. Variant OJEU Tenders shall only be considered if the Participant also submits a compliant primary tender.	To provide clarity and re-numbering.
9.8	N/A	Evaluation models for PQQ's and ITT's shall be lodged with Internal Audit before any submission documents are opened. The evaluation model shall not be divulged to Participants.	Delete	Evaluation models are held on YORtender and auditable. The new Rule 10.2. Ensure evaluation models are prepared prior to submission of bids.
9.9	N/A	Directors shall invite tenders on the basis of one of the options identified in <b>Rule 10</b> .	Delete – revised Rule 11 outlines options for OJEU tenders.	To provide clarity. Re-numbering.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
N/A	10.6	Not currently included.	The evaluation of the OJEU Tender submissions shall be carried out by Officers who are considered appropriate having regard for the subject matter and value of the Contract.	To provide clarity. Re-numbering.
10.1	N/A	<p><b>10.1 Open Tenders</b></p> <p>10.1.1 If a Contract (including a Contract for Social or Other Specific Services or a contract for Works) has a value in excess of £100,000 but below £172,514 then the following procedures shall apply:-</p> <p>(i) A notice advertising the opportunity shall be published through the E-Sourcing System and Contracts Finder and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract, how the ITT documents may be obtained and the closing date for receipt of tenders by the Council.</p> <p>(ii) The deadline date for the return of tenders shall be at least 28 days after the publication of the first advertisement of the ITT and, where relevant, at least 14 days after the last ITT advertisement is published.</p> <p>(iii) The criteria which are to be applied in the evaluation of the tenders shall be recorded in writing before ITT's are issued and shall be included in the documents provided to all Participants.</p> <p>(iv) The evaluation of the tenders shall be carried out by Officers, nominated by the Director in consultation with the DPC, who are considered appropriate having regards for the subject matter</p>	Delete	<p>To provide clarity – due to changes in the thresholds all procurements under EU thresholds will be bids, therefore open procedure does not apply.</p> <p>OJEU tender options covered in Rule 11.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>and value of the Contract.</p> <p>(v) The evaluation model shall be lodged with Internal Audit before any submission documents are opened, The evaluation model shall not be divulged to Participants.</p>		
10.2		<p><b>10.2 Restricted Tenders</b></p> <p>10.2.1 Only in the case of Social or Other Specific Service contracts or Works contracts in excess of £172,514 if a Director, in consultation with the DPC, considers it appropriate that any ITT shall be restricted to selected Participants by issuing a PQQ to all potential Participants followed by an ITT to those Participants selected at the PQQ stage then the following procedures shall apply:</p> <p>(i) A notice advertising the opportunity and inviting expressions of interest shall be published through the E-Sourcing System and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract and invite potential Participants to complete and submit a PQQ to the Council in order to be considered to be invited to tender. The notice shall include details as to how PQQ's are to be submitted and the closing date for their receipt by the Council.</p> <p>(ii) The deadline date for return of PQQ's shall be at least 28 days after the publication of the first advertisement of the opportunity and, where relevant, at least 14 days after the last</p>	Delete	<p>To provide clarity – detailed guidance on completing a Restricted OJEU process will be in the Procurement Manual and the Public Contract Regulations 2015.</p> <p>OJEU tender options covered in Rule 11.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>advertisement is published.</p> <p>(iii) The selection criteria which are to be applied in the evaluation of the PQQ's shall be recorded in writing before the PQQ's are invited and shall be included in the documents provided to all Participants.</p> <p>(iv) The evaluation of the PQQ's shall be carried out by Officers, nominated by the Director in consultation with the DPC, who are considered appropriate having regards for the subject matter and value of the Contract.</p> <p>(v) After evaluation of the PQQ's, ITT's shall be published to at least five Participants or, if less than five potential Participants applied or are considered suitable, such Participants as have been selected by the Director.</p> <p>(vi) The deadline date for the receipt of tenders shall be at least 28 days after the date of dispatch of the ITT's.</p> <p>(vii) The criteria which are to be applied in the evaluation of the tenders shall be recorded in writing before ITT's are published and shall be included in the documents provided to all Participants.</p> <p>(viii) The evaluation of tenders shall be carried out by Officers, nominated by the Director in consultation with the DPC, who are considered appropriate having regards for the subject matter and value of the Contract.</p> <p>(ix) The evaluation model shall be lodged with Internal Audit before any submission documents are opened. The evaluation model shall not be divulged to potential Contractors.</p>		

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
10.3	N/A	Tenders for Contracts which exceed the EU Threshold shall be invited and awarded as prescribed in <b>Rule 10.1.1(i) to (v)</b> or <b>Rule 10.2.1(i) to (ix)</b> but taking into account the following amendments:	Delete.	To provide clarity.
10.3.1	N/A	<b>Open Tenders:</b> the deadline date for the return of tenders shall be a minimum of 35 days after the publication of the first advertisement of the ITT. The actual deadline date shall be determined having taken into consideration the complexity of the Contract and the time required for the completion of the tender documents by Participants. The requirement for 35 days may be reduced to 30 days when using the E-Sourcing System. Where a Prior Information Notice (PIN) has been published the minimum time limit may be reduced to 15 days.	Delete.	Detailed process guidance on timescales will be in the Procurement Manual and the Public Contract Regulations 2015
10.3.2	N/A	<b>Restricted Tenders:</b> the deadline date for the return of PQQ's shall be at least 30 days after the publication of the first advertisement of the opportunity. The deadline date for the receipt of tenders shall be at least 30 days after the date of publication of the ITT. The requirement for 30 days may be reduced to 25 days after the publication of the first advertisement of the opportunity for the return of the PQQ and reduced to 25 days for the return of the ITT after the date of its publication when using the E-Sourcing System. Where a PIN has been published the minimum period may be	Delete	Detailed process guidance on timescales will be in the Procurement Manual and the Public Contract Regulations 2015

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		reduced to 10 days for return of ITT.		
10.4.1	N/A	If a Director considers it appropriate to establish a Framework Agreement then the Framework Agreement shall be established using the procedures set out in either <b>Rule 10.1.1(i) to (v)</b> or <b>10.2.1(iv) to (ix)</b> .	Delete	To provide clarity. The route to market is approved via the Gateway Process.
10.4.2	N/A	Where the value of the proposed Framework Agreement exceeds the EU Threshold, the procedure prescribed by the PCR's shall apply to all aspects of the procurement and to the subsequent operation of the Framework Agreement including, but not limited to:- (i) the procurement methodology; (ii) the placement of orders under the Framework Agreement; (iii) further competition between Contractors appointed to the Framework Agreement.	Delete	Options for OJEU tenders are outlined in Rule 11.  Procedural application is covered in the Procurement Manual.
10.4.3	N/A	The duration of a Framework Agreement shall be limited, as prescribed by the PCR's, to a maximum of four years including any extension periods.	Delete	Options for OJEU tenders are outlined in Rule 11.  Procedural application is covered in the Procurement Manual.
10.5.1	N/A	If a Director considers it appropriate to maintain a list of suitable Contractors for particular types of Work and/or Supplies and/or Services and/or Social and Other Specific Services, where the estimated value of the Work and/or Supplies and/or Services and/or Social and Other Specific Services is below the relevant EU Threshold, the list of suitable Contractors shall be established using the	Delete	Options for OJEU tenders are outlined in Rule 11.  Procedural application is covered in the Procurement Manual.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>procedures set out below:-</p> <p>(i) A notice inviting expressions of interest shall be published through the E-Sourcing System and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract and invite potential Participants to apply to the Council to be considered for inclusion on the approved list by the Council. The notice shall include details as to how expressions of interest are to be submitted and the closing date for their receipt by the Council.</p> <p>(ii) The deadline date for the return of expressions of interest shall be at least 28 days after the publication of the first advertisement of the expressions of interest and, where relevant, at least 14 days after the last advertisement is published.</p> <p>(iii) The selection criteria which are to be applied in the evaluation of the expressions of interest shall be recorded in writing before expressions of interest are invited and shall be included in the documents provided to all Participants.</p> <p>(iv) The evaluation of expressions of interest shall be carried out by Officers, nominated by the Director in consultation with the DPC, who are considered appropriate having regards for the subject matter and value of the Contract. The Director shall then maintain a list of such approved Contractors categorised by Works/Supplies/Services/Social and Other Specific</p>		

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>Services type and value as may be applicable.</p> <p>(v) The Director shall review the performance of all Contractors on the approved list at regular intervals, not exceeding 12 months from the date of appointment of the Contractor to the approved list.</p> <p>(vi) The Director may remove Contractors from an approved list where the Director and CD-SR agree that such removal is appropriate, having regards for the conduct, performance and/or status of the Contractor in relation to those standards identified in the original expressions of interest.</p> <p>(vii) The Director may, after consultation with the CD-SR approve an application from a potential Contractor to be added to an existing approved list.</p> <p>(viii) ITT's or Invitations to Quote shall be invited in accordance with <b>Rule 10</b> or <b>Rule 8</b>.</p> <p>(ix) The Director shall maintain records of the tenders or quotations invited from an approved list such that the names of the Contractors invited to tender, the selection process and Contracts awarded to each Contractor are available for inspection.</p> <p>(x) Approved Lists may remain in force for a maximum of five years. Before the expiration of the Approved List a replacement shall be established, if appropriate, in accordance with <b>Rule 10.5</b>.</p>		
10.6	N/A	<p><b>Dynamic Purchasing Systems, Competitive Dialogue Procedure, Competitive Procedure with Negotiation and Innovation Partnership Procedure</b></p> <p>Where a Director, in consultation with the CD-SR, agrees that it is appropriate, a Dynamic Purchasing</p>	Delete	<p>Options for OJEU tenders are outlined in Rule 11.</p> <p>Procedural application is covered in the Procurement Manual.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		System, the Competitive Dialogue Procedure, the Competitive Procedure with Negotiation or the Innovation Partnership Procedure may be used for the invitation of tenders in accordance with the requirements of the PCR's.		
N/A	11	Not currently included.	<p>The Gateway Process shall identify which of the following OJEU Tender processes shall be used to invite tenders for Contracts with a value in excess of the relevant EU Threshold:</p> <ul style="list-style-type: none"> <li>(i) the Open Procedure (as prescribed by Regulation 27)</li> <li>(ii) the Restricted Procedure (as prescribed by Regulation 28)</li> <li>(iii) the Competitive Procedure with Negotiation (as prescribed by Regulation 29)</li> <li>(iv) the Competitive Dialogue Procedure (as prescribed by Regulation 30)</li> <li>(v) the Innovation Partnership Procedure (as prescribed by Regulation 31)</li> <li>(vi) Negotiated Procedure without prior publication (as prescribed by Regulation 32)</li> <li>(vii) Framework Agreement (as prescribed by Regulation 33)</li> <li>(viii) Dynamic Purchasing System (as prescribed by Regulation 34)</li> <li>(ix) Electronic auctions (as prescribed by Regulation 35)</li> <li>(x) Electronic catalogues (as prescribed by Regulation 36)</li> <li>(xi) Light Touch Regime (as prescribed by Regulations 74-76)</li> </ul>	<p>To provide clarity. Procedural application is covered in the Procurement Manual.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
			and such identified process shall be used for the invitation of OJEU Tenders in accordance with the requirements of the PCR's.	
11.1	12.1	A written tender may only be considered if:- (a) it has been received electronically through the E-Sourcing System, or (b) (where permitted) it has been received in hard copy in a sealed envelope marked "Tender" and indicating the subject matter of the tender, and the identity of the Participant cannot be ascertained from the tender envelope, (c) and subject to <b>Rule 11.4</b> , it has been returned electronically through the E-Sourcing System or to the ACE(LDS) (or a person designated by him) in accordance with the instructions contained in the ITT before the tender closing date.	A written OJEU Tender may only be considered if:- (a) it has been received electronically through the E-Sourcing System; or  (b) (where permitted under Regulation 84 (h)) it has been received in hard copy in a sealed envelope marked "OJEU Tender" and indicating the subject matter of the OJEU Tender, and the identity of the Participant cannot be ascertained from the tender envelope; and  (c) (subject to <b>Rule 12.4</b> ) it has been received by the OJEU Tender closing date and time	New Rule 12 amended to provide clarity on receipt of tenders in light of an electronic auditable system and the PCRs 2015.
11.2	12.2	The ACE(LDS) (or a person designated by him) shall be responsible for the reception and safe custody of tenders until they are opened.	No change to wording.	Re-numbering only.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
11.3	12.3	Tenders, whether electronic or hard copy must be opened at the same time and in the presence of the ACE(LDS) (or a person designated by him) or, where Legal and Democratic Services is undertaking the procurement, the CD-SR (or an Officer designated by him). Whoever opens the tenders shall maintain a record of the tenders received. Such a record shall include the date and time of tender opening, the identity of the Officer(s) present, the identities of Participants and the tendered sums (where readily ascertainable). A copy of such a record shall be provided as soon as practicable to the Director inviting the tenders and to Internal Audit.	OJEU Tenders, whether electronic or hard copy must be opened at the same time and in the presence of the ACE(LDS) (or a person designated by him) or, where Legal and Democratic Services is undertaking the procurement, the CD-SR (or an Officer designated by him). The E-Sourcing System records the date and time of the OJEU Tender opening, the identity of the Officer(s) present, the identities of the Participants and the tendered sums. Where permitted under Regulation 84 (h) and OJEU Tenders are returned in hard copy format a written record shall be maintained of the OJEU Tenders received. Such a record shall include the date and time of OJEU Tender opening, the identity of the Officer(s) present, the identities of Participants and the tendered sums (where readily ascertainable). A copy of such a record shall be provided as soon as practicable to the Director inviting the OJEU Tenders for audit purposes.	To provide clarity. The electronic auditable system will be used. Where electronic copies are not possible (in exceptional circumstance) clarity on Officers authorised to open tenders. Re-numbering.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
11.4	12.4	If a Tender is received after the specified tender closing date it may not be considered unless the ACE(LDS) is satisfied that the Tender was submitted electronically or posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Participant and that other tenders have not been opened.	If an OJEU Tender is received after the specified closing date and time it may not be considered unless the ACE(LDS) is satisfied that the OJEU Tender was submitted electronically or posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Participant.	To provide clarity. Re-numbering.
12.1	13.1	The Director shall evaluate tenders using the evaluation model lodged with Internal Audit in accordance with <b>Rules 9.8, 10.1.1(v) and 10.2.1(ix)</b> .	The Director shall evaluate OJEU Tenders using the evaluation model published in accordance with <b>Rule 10.2</b> .	To provide clarity. Re-numbering.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
12.2	13.2	If a tender other than the MEAT or the lowest price is to be accepted the written approval of the Director, after consultation with the CD-SR, shall be obtained and a signed and dated record kept of the reasons for the action taken shall be made however, no such approval can be given where the Contract is subject to PCR's other than in exceptional circumstances agreed by the ACE(LDS).	Only in exceptional circumstances agreed by the ACE(LDS) can an OJEU Tender other than the MEAT be accepted. In these circumstances a signed and dated record of the reasons for the action taken shall be made within the Gateway Process (Stage 3).	To provide clarity. Due to changes in the thresholds all tenders are subject to the PCRs. Re-numbering.
12.3	N/A	Each Director shall maintain an electronic or written record of all successful Participants in a form approved by the CD-SR in accordance with the Council's Document Retention Policy.	Delete	This is business as usual and recorded in the evaluation model and Gateway (Stage 3).
12.4	13.3	If, as a result of the tender evaluation process the Director is satisfied that an arithmetical error has been made inadvertently by a Participant such an error may, after consultation with the Participant, be corrected. The Director shall record any such correction in writing.	If, as a result of the OJEU Tender evaluation process the Director is satisfied that an arithmetical error has been made inadvertently by a Participant such an error may, after clarification with the Participant, be corrected. The Director shall record any such clarification in writing.	To provide clarity. All tenders are subject to the PCRs and as such any discrepancy should be dealt with via clarification. Re-numbering.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
12.5	13.4	Before a Contract is awarded the Director shall, in consultation with the CD-SR, complete a risk assessment to ascertain the financial stability of the successful Participant. The risk assessment shall take into account the subject matter, complexity, duration, value and any other such factors as may be deemed to be relevant. This shall be undertaken in accordance with the Gateway Process (Gateway 3).	Before a Contract is awarded the Director shall, in consultation with the CD-SR, complete a risk assessment to ascertain the financial stability of the successful Participant. The risk assessment shall take into account the subject matter, complexity, duration, value and any other such factors as may be deemed to be relevant. This shall be undertaken in accordance with the Gateway Process (Stage 3).	To provide clarity.  Re-numbering.
12.6	13.5	On completion of the evaluation of the tenders received and once all internal approvals have been obtained, the Director shall write to all Participants informing them of the outcome of the tender evaluation and providing feedback on the content of their tender. Where appropriate such feedback shall be given in accordance with the PCR's.	On completion of the evaluation of the OJEU Tenders received and once all internal approvals have been obtained through the Gateway Process (Stage 3), the Director shall write to all Participants informing them of the outcome of the OJEU Tender evaluation and providing feedback on the content of their submission, in accordance with Regulation 55 of the PCRs.	To provide clarity.  Due to changes in the thresholds all tenders are subject to the PCRs.  Re-numbering.
12.7	13.6	For OJEU tenders the Director shall wait a minimum of ten days from the date of issue of the letters notifying the Participants of the result of the evaluation before completing the Contract with the successful Participant.	The Director shall wait a minimum of ten days (15 days if not sent electronically) from the date of issue of the letters notifying the Participants of the result of the evaluation before completing the Contract with the successful Participant.	To provide clarity.  Due to changes in the thresholds all tenders are subject to the PCRs.  Re-numbering.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
12.8	13.7	For OJEU tenders the Director shall send for publication a Contract Award Notice stating the outcome of the procurement procedure no more than 30 days after the award of the contract.	The Director shall send for publication a Contract Award Notice stating the outcome of the procurement procedure no more than 30 days after the award of the Contract.	To provide clarity. Due to changes in the thresholds all tenders are subject to the PCRs.
12.9	N/A	Where the tender involves payment to the Council <b>Rule 12.2</b> shall apply except that the word “highest” shall be substituted for “lowest” in that Rule.	Delete	Amendments to new Rule 13.2 mean Rule 12.9 (under the current CPRs) is no longer applicable.
14.0	N/A	14.1 Where purchasing cards are issued by the Council the following provisions shall apply:- (a) their use shall be subject to the procedures laid down by the CD-SR (b) cards shall only be issued to, and used by, Officers nominated by a Director (in consultation with the CD-SR) (c) for the purpose of <b>Rule 5.1</b>	Delete	This is part of the Finance Procedure Rules.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
15.0	14.1	The Local Government (Contracts) Act 1997 clarified the power of local authorities to enter into certain contracts, including Private Finance Initiative Contracts. Where Contracts need to be certified under the 1997 Act, only the following Officers are authorised to do so: the Corporate Director Children and Young People's Service, the Corporate Director Business and Environmental Services, the Corporate Director Health and Adult Services and the CD-SR.	No changes to wording.	Re-numbering only.
16.1	15.1	A Director does not need to invite quotations or tenders in accordance with <b>Rules 8, 9 and 10</b> in the following circumstances:-	A Director does not need to invite bids in accordance with <b>Rule 8</b> , in the following circumstances:-	Re-numbering and to provide clarity that the exceptions can only apply to the bid process.
N/A	15.1(C)	Not currently included	where a grant or other external funding is received by the Council, either in its own right or as an accountable body, and the terms of such grant or other external funding state that such grant or other external funding must be applied in accordance with the terms of such grant or other external funding; or	To provide clarity and include guidance on grants.
16.1 (c)	15.1 (f)	the purchase of Supplies, Works, Services or Social and Other Specific Services which are of such a specialised nature as to be obtainable from one Contractor only, except where the value of the Contract exceeds the relevant EU Threshold;	repairs to or the supply of parts for existing proprietary machinery or plant where to obtain such supplies from an alternative supplier would invalidate the warranty or contractual provisions with the existing supplier;	To provide clarity on situations in which this exception applies.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
16.1 f	15.1 (g)	<p>Social or Other Specific Services Contracts with a value below the EU Threshold where:-</p> <p>(i) the service is currently supplied by a Contractor to the satisfaction of the relevant Corporate Director, is considered to be offering value for money and where the foreseeable disruption to service users cannot justify the invitation of further quotations or tenders, or</p> <p>(ii) the service is of a specialist or personal nature and where service users must be involved in the selection of the Contractor and where the Corporate Director Health and Adult Services and the Corporate Director Children and Young People's Service considers it inappropriate for quotations or tenders to be invited, or</p> <p>(iii) where the relevant Corporate Director is satisfied that the urgency of the need for the service prevents the invitation of quotations or tenders in which case consideration shall be given to the duration of that service.</p>	<p>Social or Other Specific Services Contracts where:-</p> <p>(i) the service is currently supplied by a Contractor to the satisfaction of the relevant Corporate Director, is considered to be offering value for money and where the foreseeable disruption to service users cannot justify the invitation of further bids, or</p> <p>(ii) the service is of a specialist or personal nature and where service users must be involved in the selection of the Contractor and where the Corporate Director Health and Adult Services and the Corporate Director Children and Young People's Service considers it inappropriate for bids to be invited, or</p> <p>(iii) where the relevant Corporate Director is satisfied that the urgency of the need for the service prevents the invitation of bids in which case consideration shall be given to the duration of that service;</p>	<p>Re-numbering and to provide clarity that the exception can only apply to the bid process.</p>
16.1 g	N/A	<p>Contracts which are classifiable as 'Social and Other Specific Services Contracts' under the PCR's, with a value in excess of the EU Threshold for Social and Other Specific Contracts, in which case the appropriate process in accordance with the provisions of Regulations 75 and 76 of the PCRs shall be followed.</p>	<p>Delete</p>	<p>No longer applicable due to changes in the bid / OJEU tender process and associated Rules.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
16.1 (h)	15.1 (h)	Contracts where the Director with the agreement of the ACE(LDS) and the CD-SR agree that for reasons of extreme urgency brought about by unforeseeable events unattributable to the Council, the timescales for obtaining quotations or tenders cannot be met. A written record shall be signed and dated by the Director, whenever this rule applies.	Contracts where the Director with the agreement of the CD-SR agree that for reasons of extreme urgency brought about by unforeseeable events unattributable to the Council, the timescales for obtaining bids cannot be met. A written record shall be signed and dated by the Director, whenever this Rule applies.	Re-numbering and to amend quotation to bid.
16.2	15.2	Where any of the exceptions set out in (a) to (h) above are applied a written record of the decision and justification shall be signed and kept as part of the Gateway Process.	Where any of the exceptions set out in <b>(d) to (h)</b> above are applied a Directors Recommendation, in consultation with the relevant DPC, shall be signed, dated and kept. The Director shall maintain a register of all recommendations made under this Rule.	To provide clarity.
N/A	15.3	Not currently included.	<p>A Director does not need to invite OJEU tenders in accordance with <b>Rule 10 and 11</b>, in the following circumstances:-</p> <p>(a) purchases via Framework Agreements which have been established either by the Council or by other public sector bodies or consortia (including, but not limited to YPO) and where such Framework Agreements are lawfully accessible to the Council. Contracts awarded from such Framework Agreements shall be awarded in accordance with the provisions of that Framework Agreement. Where appropriate Officers should apply a minimum 10 day standstill period for all call-off Contracts awarded under an existing Framework Agreement. This is not mandatory but is deemed best practice; or</p> <p>(b) where:</p>	To provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
			<p>(i) Regulations 12 or 72 of the PCRs apply; or  (ii) any other specific exclusions as set out in the PCRs apply;</p> <p>and the ACE(LDS), the relevant Director and CD-SR are in agreement. A written record shall be signed and dated whenever this Rule applies and the Director shall maintain a register of such written records.</p>	
16.3.1	15.4	Specific exceptions to Rules <b>8, 9 and 10</b> are permitted in such other circumstances as the CD-SR and the ACE(LDS) may agree.	Specific exceptions to <b>Rule 8</b> are permitted in such other circumstances as the CD-SR and the ACE(LDS) may agree.	To provide clarity in light of the changes to the thresholds.
16.3.2	15.5	Requests for waivers shall be made using a form prescribed by the ACE(LDS) and the CD-SR which shall specify the reasons for the request and include a completed risk assessment of the proposal.	Requests for waivers shall be made using the Waiver Request Form prescribed by the ACE(LDS) and the CD-SR which shall specify the reasons for the request.	To provide clarity.
16.3.3	15.6	The ACE(LDS) shall maintain a register of all requests made under this Rule and the responses given to them.	No change to wording.	Re-numbering only.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
N/A	15.7	Not currently included.	Specific exemptions to <b>Rule 10 and 11</b> may be permitted in exceptional circumstances as the ACE(LDS) and CD-SR may agree in accordance with the PCRs. The ACE(LDS) shall maintain a register of all requests made under this Rule and the responses given to them.	To provide clarity.
17.1	16.1	Every officer shall comply with these Rules and any unauthorised failure to do so may lead to disciplinary action.	Re-numbering only.	To provide clarity.
17.2	16.4	Each Director, CPG and/or the DPC's shall take all such steps as are reasonably necessary to ensure that Officers within their Directorate are aware of and comply with these Rules, the <i>Procurement Manual</i> and the <i>Finance Manual</i> referred to in <b>Rule 2.5</b> .	Re-numbering only.	To provide clarity.
17.3	16.3	The CD-SR shall be responsible for monitoring adherence to these Rules.	Re-numbering only.	To provide clarity.
17.4	16.2	Each Director shall nominate a representative to act as a key contact point in relation to procurement matters for the Directorate; such representatives shall be termed " <b>Directorate Procurement Champions</b> " in this Rule.	Re-numbering only.	To provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
17.5	16.5	<b>DPC's</b> are responsible for the production of a FPP which will be completed in such format as CPG shall require.	Re-numbering only.	
17.6	16.6	The DPC's shall each present an updated FPP to their respective directorate management teams quarterly for approval throughout the year.	Re-numbering only.	
17.7	16.7	An annual report on procurement matters, such report to include an annual procurement plan and actions arising from the annual procurement plan, will be presented to a meeting of the Corporate and Partnership Overview and Scrutiny Committee.	Re-numbering only.	
17.8	16.8	The Council maintains a Contract Register the purpose of which is to: (a) record key details of all contracts with an aggregate value of £25,000 or more; and  (b) identify a contract reference number.	The Council maintains a Contract Register the purpose of which is to record key details of all Contracts with an aggregate value of £25,000 or more.	Re-numbering and to provide clarity.
17.9	16.9	DPC's shall ensure that:- (a) all relevant contracts (including those Contracts to which <b>Rule 16</b> applies) are entered onto the Contract Register and the appropriate Contract number recorded  (b) the Contract Register is maintained by entering new Contracts onto it and removing expired contracts from it in line with the Council's Records	DPCs shall ensure that:-  (a) all relevant Contracts (including those Contracts to which <b>Rule 15</b> applies) are entered onto the Contract Register  (b) the Contract Register is maintained by entering new Contracts onto it and removing expired Contracts from it in line with the Council's	Re-numbering and to provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Retention and Destruction Schedule.	Records Retention and Destruction Schedule.	
17.10	16.10	When a Contract in excess of £25,000 is awarded the Director shall ensure that such information as is prescribed in the PCRs is published on Contracts Finder.	When a Contract in excess of £25,000 is awarded the Director shall ensure that such information as is prescribed in the PCRs is published on Contracts Finder via the E-Sourcing system.	Re-numbering and to provide clarity.
18.1	17.1	When a procurement is being considered which is expected to exceed the financial value thresholds specified in <b>Rule 18.2</b> then the Responsible Officer must complete the necessary Gateway Process report for consideration by the relevant Directorate Management Team or the relevant Director, the Assistant Director with responsibility for finance within that Directorate, and the DPC. No procurement should commence before the Gateway Process report is approved. The report shall include the estimated “whole life” financial value of the contract, the procurement methodology and any other relevant factors including, but without limitations, any TUPE implications. The Assistant Director with responsibility for finance will enter details on a register of procurements approved under this Rule which will be available to the CD-SR and the ACE(LDS).	When a procurement is being considered which is expected to exceed the financial value thresholds specified in <b>Rule 17.2</b> then the Responsible Officer must complete the Gateway Process report for consideration by the relevant Directorate Management Team and the ACE(LDS) or the relevant Director, the Assistant Director with responsibility for finance within that Directorate, the ACE(LDS) and the DPC. No procurement should commence before the Gateway Process report is approved. The report shall include the estimated “whole life” financial value of the Contract, the procurement methodology and any other relevant factors including, but without limitations, any TUPE implications. The Assistant Director with responsibility for finance will enter details on a register of procurements approved under this Rule which will be available to the CD-SR and the ACE(LDS).	To provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
18.2	17.2	<p>The whole contract financial value thresholds for the purposes of <b>Rule 18.1</b> are:</p> <p>(a) Works contracts - £100,000</p> <p>(b) Social and Other Specific Services Contracts and Supplies and Services contracts £100,000.</p>	<p>The whole Contract financial value thresholds for the purposes of <b>Rule 17.1</b> are:</p> <p>(a) Works Contracts - £1m</p> <p>(b) Social and Other Specific Services Contracts - £625,050.</p> <p>(c) Supplies and Services Contracts - £172,514</p>	<p>To align the Gateway values to the OJEU thresholds (with the exception of Works which is £1m).</p> <p>To provide clarity.</p>
18.3	N/A	<p>When a procurement is being considered which is expected to exceed the financial value thresholds specified in <b>Rule 18.4</b> then the Responsible Officer must ensure the necessary Gateway Process report prepared in accordance with <b>Rule 18.1</b> is also considered by the ACE(LDS) or by a LDSO authorised by him. No procurement should commence before the Gateway Process report is approved.</p>	Delete	<p>Changes in new Rule 17.1 and 17.2 mean this is no longer required.</p>
18.4	N/A	<p>The whole Contract financial value thresholds for the purpose of <b>Rule 18.3</b> are:</p> <p>(a) Works Contracts - £1m</p> <p>(b) Supplies and Service Contracts and Social and Other Specific Services Contracts - £172,514</p>	Delete.	<p>Changes in new Rule 17.1 and 17.2 mean this is no longer required.</p>
18.5	17.3	<p>No action leading towards procurement, including any steps to undertake a further competition under an existing framework arrangement, shall be undertaken until confirmation of the process has been given under the terms set out in <b>Rule 18.1 and 18.3</b>.</p>	<p>No action leading towards procurement, including any steps to undertake a further competition under an existing framework arrangement, shall be undertaken until confirmation of the process has been given under the terms set out in <b>Rule 17.1</b>.</p>	<p>Re-numbering and to provide clarity.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
19.1	18.1	The Responsible Officer shall take all such steps as are appropriate to monitor and review the performance of the Contract, having regard to its value, nature, duration and subject matter. As part of the monitoring and review process the Responsible Officer shall maintain adequate records of Contract performance and details of review meetings with the Contractor. Such records and details shall be made available to Internal Audit whenever required and shall be recorded in any relevant Gateway Process report (Gateway 4). Such records shall also be used on the basis for any permitted extension to the Contract.	The Responsible Officer shall take all such steps as are appropriate to monitor and review the performance of the Contract, having regard to its value, nature, duration and subject matter. As part of the monitoring and review process the Responsible Officer shall maintain adequate records of Contract performance and details of review meetings with the Contractor. Such records and details shall be made available to Internal Audit whenever required and shall be recorded in any relevant Gateway Process report (Stage 4). Such records shall also be used on the basis for any permitted extension to the Contract.	Re-numbering and to provide clarity.
19.2	N/A	Contracts may be varied in accordance with the terms of that Contract. Any proposed variations which have the effect of materially changing the Contract must be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence.	Delete	Inclusion of new Rule 18.2 and 18.3 mean this is no longer required.
N/A	18.2	Not currently included.	OJEU Contracts may be varied in accordance with the terms of that Contract or as outlined in Regulation 72 of the PCRs. Any proposed variations which have the effect of materially changing the Contract must be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence.	Re-numbering and to provide clarity.
N/A	18.3	Not currently included.	Contracts with a value in excess of the relevant EU Threshold may be varied in accordance with the terms of that Contract or as outlined in Regulation 72 of the PCRs. Any proposed variations which have the effect of materially changing the Contract	Re-numbering and to provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
			must be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence.	
N/A	18.4	Not currently included	If an Officer requires a Contract which exceeds the financial values stated in <b>Rule 17.2</b> to be terminated then this must be done in accordance with the terms of the Contract. Approval must be sought in accordance <b>Rule 17.1</b> (Gateway Process Stage 4b).	Re-numbering and to provide clarity.
20.1	19.1	Any officer involved in procurement activities shall have received a level of formal training commensurate with the nature of the procurement activity being undertaken.	Where appropriate any Officer involved in procurement activities shall have received a level of formal training commensurate with the nature of the procurement activity being undertaken.	Re-numbering and to provide clarity.
21.1	20.1	If it comes to the knowledge of a Member, Responsible Officer or other Officer that a Contract in which he has an interest (determined in accordance with the Members' and/or Officers' Code of Conduct as appropriate) has been or is proposed to be entered into by the Council, he shall immediately give written notice to the ACE(LDS).	If it comes to the knowledge of a Member, Responsible Officer or other Officer that a Contract in which he has an interest (determined in accordance with the Members' and/or Officers' Code of Conduct as appropriate) has been or is proposed to be entered into by the Council, he shall immediately give written notice to the ACE(LDS).	Re-numbering and to provide clarity.
N/A	21.1	Not currently included	A Director shall consider when procuring the provision of the Services, Supplies Works or Social & Other Specific Services, whether a Grant would be a preferable means to achieving its objectives rather than following a competitive Bid process.	To provide clarity and include guidance on grants.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
N/A	21.2	Not currently included	Where the value of a Grant exceeds £25,000, the Director shall have the discretion to conduct a competitive application process for the award of that Grant if doing so demonstrates best value for the Council. If a Director is not conducting a competitive application process then the Best Value Form must be completed to capture the rationale for the decision.	To provide clarity and include guidance on grants.
N/A	21.3	Not currently included	Where the value of a Grant exceeds the relevant EU Threshold, the Director shall complete the Gateway Process in accordance with Rule 17.	To provide clarity and include guidance on grants.

# Contract Procedure Rules

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*These Rules constitute the Council's Standing Orders in relation to contracts under Section 135 of the Local Government Act 1972 and apply to all contracts (excluding those stated in **Rule 2.2**), including those made in the course of the discharge of functions which are the responsibility of the Executive.*

## **1. INTRODUCTION**

1.1 These terms will have the following meanings in the Contract Procedure Rules:-

<b>ACE(LDS)</b>	means Assistant Chief Executive (Legal and Democratic Services)
<b>Best Value Form</b>	means the form to be completed to capture the rationale for not seeking bids in accordance with <b>Rule 8.1</b>
<b>CD-SR</b>	means the Corporate Director - Strategic Resources
<b>Constitution</b>	means the Council's Constitution of which these Rules form part.
<b>Contract</b>	means any agreement made between the Council and any other person which is intended to be legally enforceable and involves the acceptance of an offer made by one party to commit itself to an action or series of actions and subject to the exceptions in <b>Rule 2.2</b>
<b>Contracts Finder</b>	means the web-based portal as described in the PCRs
<b>Contract Register</b>	means the register of Contracts maintained by the Council as set out in <b>Rule 16.8</b>
<b>Contractor</b>	means a person or entity with whom the Council has a Contract
<b>Council</b>	means North Yorkshire County Council
<b>CPG</b>	means the Corporate Procurement Group
<b>Director</b>	means the Chief Executive Officer; Corporate Director Business and Environmental Services; Corporate Director Health and Adult Services; Corporate Director Children and Young People's Service; Corporate Director - Strategic Resources as the context requires
<b>Directors Recommendation</b>	means a written record of the decision and justification to apply one of the exceptions set out in <b>Rule 15.1</b> to be signed and kept by the relevant Director
<b>DPC</b>	means a Directorate Procurement Champion
<b>E-Sourcing system</b>	means the Council's chosen E-sourcing system (currently YORtender) or an approved alternative
<b>EU</b>	means the European Union

<b>EU Threshold</b>	means the current threshold above which the PCR's apply, currently £172,514 for services and supplies £625,050 for social and other specific services and £4,322,012 for works
<b>FPP</b>	means the Forward Procurement Plan which outlines all future procurement requirements of the Council
<b>Framework Agreement</b>	means an agreement with one or more contracting authorities and one or more economic operator which establishes an arrangement for: <ul style="list-style-type: none"> <li>(i) multiple orders to be placed with one Contractor (a single supplier framework), or</li> <li>(ii) a framework of multiple Contractors to engage in further competitions (a multiple supplier framework)</li> </ul>
<b>Gateway Process</b>	means the Council's value based gateway procurement process that combines assessment and understanding of various aspects of value with appropriate review and scrutiny at defined points in the procurement cycle
<b>Internal Audit</b>	means the Council's appointed internal auditors (currently Veritau)
<b>ITB</b>	means an Invitation to Bid
<b>ITT</b>	means an Invitation to Tender
<b>Key Decision</b>	means a decision made in connection with the discharge of a function which is the responsibility of the Executive as set out in Article 13.03(b) of the Constitution [ <a href="#">insert hyperlink</a> ]
<b>Leasing Agreement</b>	means a Contract for the provision of finance to enable goods or services to be obtained and where ownership in those goods does not automatically pass to the Council at the end of the Contract period
<b>LDSO</b>	means a Legal and Democratic Services Officer
<b>MEAT</b>	means the Most Economically Advantageous Tender
<b>Member</b>	means a member of the Council or co-opted member on a Council committee
<b>Officer</b>	means a Council employee or other authorised agent
<b>OJEU</b>	means the Official Journal of the European Union
<b>OJEU Tender</b>	means the procurement process to be followed where the estimated whole life value of a Contract exceeds the relevant EU Threshold

<b>Participant</b>	means a person or entity participating in a procurement process, who has expressed an interest in tendering for a Contract or who has tendered for a Contract
<b>PCR</b>	means the Public Contracts Regulations 2015
<b>Person</b>	means any individual, partnership, company, trust, other local authority, Government department or agency
<b>PQQ</b>	means the Pre-Qualification Questionnaire
<b>Procurement Manual</b>	means the manual to accompany these Rules which provides detailed guidance on procurement techniques and the effect of the Rules
<b>Procurement Strategy</b>	means the Council's Procurement Strategy as agreed from time to time.
<b>Property Contract</b>	means a Contract which creates an estate or interest in land or buildings
<b>Responsible Officer</b>	means the Officer who is responsible for the procurement and/or management of a Contract
<b>Rules</b>	means these Contract Procedure Rules
<b>Services or Supplies</b>	means as defined in Regulation 2 of the PCRs
<b>Social and Other Specific Services</b>	means those services defined as such in Schedule 3 of the PCRs
<b>Waiver Request Form</b>	means the prescribed form to be completed when requesting a waiver in accordance with <b>Rule 15.4</b>
<b>Works</b>	means as defined in Regulation 2 of the PCRs
<b>YPO</b>	means the Yorkshire Purchasing Organisation

1.2 References in these Rules to:-

- (a) any legislation (e.g. Act, Statutory Instrument, EU Directive) include a reference to any amendment or re-enactment of such legislation;
- (b) the value of any Contract are to the total estimated aggregate gross value payable over the full period of the Contract including any options or extensions to the Contract without any deduction for income due to the Contractor or the Council;
- (c) the singular include the plural and vice versa;
- (d) the masculine include the feminine and vice versa;
- (e) Directors, the CD-SR and the ACE(LDS) shall be taken to include such Officers as are designated by those officers to undertake the duties and responsibilities set out in these Rules, except in the case of the following Rules:-

- (i) Director - **Rules 8.6, 15.1(d), (g) and (h), 15.3(b) and 17.1**
- (ii) CD-SR - **Rules 2.1, 2.4, 2.5, 8.6, 15.1(h), 15.3(b), 15.4, 15.5, 15.7, 16.2 and 17.1**
- (iii) ACE(LDS) - **Rules 2.1, 2.4, 2.5, 8.6, 15.3(b), 15.4, 15.5, 15.7, and 17.1**

where delegation is not permitted. A record of all duties and responsibilities as delegated under these Rules is to be maintained by each Director, the CD-SR and the ACE(LDS).

## **2 GENERAL**

- 2.1 These Rules are made by the Council on the advice of the CD-SR (in consultation with the ACE(LDS)) under Article 14.02 of the Constitution.
- 2.2 These Rules apply to all Contracts for Works, Supplies, Services or Social and Other Specific Services but do not apply to:-
  - (a) contracts of employment;
  - (b) property contracts (which are covered by the Property Procedure Rules); and
  - (c) financial instruments (including, but without limitation, shares, bonds, bills of exchange, future or options contracts) (which are covered by the Financial Procedure Rules).
- 2.3 The Council has made Financial Procedure Rules under Article 14.01 of the Constitution which shall be applied in conjunction with these Rules.
- 2.4 The CD-SR (in consultation with the ACE(LDS)) shall review the application and effect of these Rules and make an annual report or as required but no less than once per year to the Audit Committee recommending such amendments to the Rules as are considered appropriate.
- 2.5 The CD-SR and the ACE(LDS) have produced a Procurement Manual which sets out important issues to be considered in the procurement context. These Rules should be read in conjunction with the Procurement Manual.
- 2.6 The CD-SR has also produced a Finance Manual which gives advice on financial procedures.
- 2.7 Where a Contract for the acquisition or hire of goods or services involves any form of Leasing Agreement to finance the transaction then the CD-SR shall undertake the negotiation of terms and authorise the arrangement in accordance with Rule 9.3 of the Financial Procedure Rules.
- 2.8 Directors shall ensure that all documentation relating to Contracts and procurement processes (including bids) is retained in accordance with the Council's Records Retention and Destruction Schedule
- 2.9 Where the Council has awarded a Contract to any person to supervise or otherwise manage a Contract on its behalf such a person shall be required to comply with these Rules as if he were an Officer of the Council.
- 2.10 Wherever appropriate procurement shall be undertaken using the standard precedent documents contained in the Procurement Manual applying to PQQ's, ITT's or ITBs.

Wherever alternative documents are to be used they must be approved by the Director and where appropriate the ACE(LDS).

2.11 Where the total Contract value for procurement is within the values in the first column of Tables 1-3, below, the award procedure in the second column must be followed.

**Table 1: Goods and Services (excluding Social & Other Specific Services)**

<b>Total Contract Value</b>	<b>Award Procedure</b>	<b>Signature/Sealing Contract</b>
Up to £25,000	Bids not mandatory. Best Value Form to be completed where Bids are not invited.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf).
£25,000 up to EU Threshold (currently £172,514)	Bids must be invited in accordance with <b>Rule 8</b> . These must be advertised using the E-Sourcing system and published to Contracts Finder.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf).
Above EU Threshold (currently £172,514)	Follow the appropriate EU Procedure as set out in <b>Rules 10 and 11</b> . The Director must be informed of the procurement and approval sought through the Gateway process.	Two signatures: The Director (or by an Officer authorised by the Director to sign on the Directors behalf). <b>AND</b> The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf).  Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf) in accordance with <b>Rule 6</b> .

**Table 2: Works**

<b>Total Contract Value</b>	<b>Award Procedure</b>	<b>Signature/Sealing Contract</b>
Up to £25,000	Bids not mandatory. Best Value Form to be completed where Bids are not invited.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf).
£25,001 up to EU Threshold (currently £4,322,012 for Works)	Bids must be invited in accordance with <b>Rule 8</b> . These must be advertised using the E-Sourcing system and published to Contracts Finder.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf).  Contracts with a value in excess of £1m must be sealed by ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf) in accordance with <b>Rule 6</b> .

Total Contract Value	Award Procedure	Signature/Sealing Contract
Above EU Threshold (currently £4,322,012 for Works)	Follow the appropriate EU Procedure as set out in <b>Rules 10 and 11</b> . The Director must be informed of the procurement and approval sought through the Gateway process	Contracts must be sealed by ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf) in accordance with <b>Rule 6</b> .

**Table 3: Social & Other Specific Services**

Total Contract Value	Award Procedure	Signature/Sealing Contract
Up to £25,000	Bids not mandatory. Best Value Form to be completed where Bids are not invited.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf).
£25,001 up to EU Threshold (currently £625,050)	Bids must be invited in accordance with <b>Rule 8</b> . These must be advertised using the E-Sourcing system and published to Contracts Finder.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf).
Above EU Threshold (currently £625,050)	Follow the appropriate EU Procedure as set out in <b>Rules 10 and 11</b> . The Director must be informed of the procurement and approval sought through the Gateway process	Two signatures The Director (or by an Officer authorised by the Director to sign on the Directors behalf). <b>AND</b> The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf).  Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf) in accordance with <b>Rule 6</b> .

### 3. COMPLIANCE WITH LEGISLATION AND STANDARDS

3.1 Every Contract shall comply with all relevant applicable legislation and government guidance including:-

- (a) EU Law
- (b) Acts of Parliament
- (c) Statutory Instruments including, but without limitation, the Public Contracts Regulations 2015.

3.2 Where relevant, every Contract shall specify that materials used, goods provided, services supplied or works undertaken (as the case may be) shall comply with applicable standards. Such standards are, in order of priority:-

- (a) EU Standards

- (b) British Standards implementing international standards
- (c) British Standards

#### **4. POWERS AND KEY DECISIONS**

- 4.1 In consultation with the ACE(LDS) Directors shall ensure that the Council has the legal power to enter into any Contract and that in respect of all Contracts, regardless of whether they involve the procurement or provision by the Council of Works, Supplies, Services or Social and Other Specific Services Directors shall ensure that no Contract shall be entered into which is ultra vires.
- 4.2 Directors shall ensure that a written record of the decision to procure a Contract is made in accordance with the Gateway process where **Rule 17** applies. Where such a decision comprises a Key Decision under the Constitution, Directors shall ensure that it is entered on to the Forward Plan and treated as a Key Decision in all respects.

#### **5. FORM OF CONTRACT**

- 5.1 Every Contract shall be evidenced in writing (by the use of a purchase order exchange of correspondence or other written medium).
- 5.2 Wherever appropriate, and for all Contracts exceeding £25,000 in value, such written agreements shall be made on the basis of terms and conditions agreed by the ACE(LDS). Such terms and conditions may be incorporated into standard order conditions. The Council may accept different terms and conditions proposed by a Contractor provided that the advice of the ACE(LDS) as to their effect has been sought and considered.
- 5.3 The written form of agreement must clearly specify the obligations of the Council and the Contractor and shall include:-
  - (a) the work to be done or the Supplies, Services or Social and Other Specific Services to be provided
  - (b) the standards which will apply to what is provided
  - (c) the price or other consideration payable
  - (d) the time in which the Contract is to be carried out
  - (e) the remedies which will apply to any breach of Contract.
- 5.4 The written form of agreement for all Contracts exceeding £25,000 in value must include the following or equivalent wording:-
  - (a) "If the Contractor:-
    - (i) Has offered any gift or consideration of any kind as an inducement or disincentive for doing anything in respect of this Contract or any other Contract with the Council, or
    - (ii) Has committed any offence under the Bribery Act 2010, or
    - (iii) Has committed an offence under Section 117 (2) of the Local Government Act 1972

the Council may terminate the Contract immediately and will be entitled to recover all losses resulting from such termination”.

- (b) “If the Contractor is in persistent and/or material breach of Contract the Council may terminate the Contract and purchase the Supplies, Works, Services or Social and Other Specific Services from a third party and the Council may recover the cost of doing so from the Contractor.”

5.5 The standard clauses contained in the Procurement Manual relating to the Freedom of Information Act 2000 and the Data Protection Act 1998 shall, wherever possible, be included in all Contracts exceeding £25,000 in value.

5.6 Other standard clauses are contained in the Procurement Manual relating to, for example, equalities, the Public Services (Social Value) Act 2012, sustainability and best value; these are not mandatory for each such written agreement referred to in **Rule 5.4** above, but should be included where appropriate.

## **6. SIGNATURE/SEALING OF CONTRACTS**

6.1 Every written Contract must be either signed or sealed in accordance with this Rule.

6.2 The ACE(LDS) and such of his staff as he may designate are authorised to sign any such Contract.

6.3 The ACE(LDS) also authorises such Contracts to be signed as prescribed in **Rule 2.11, Tables 1-3** provided that:-

- (a) appropriate authority exists for the Council to enter into the Contract, and
- (b) the Contract is either:-
  - (i) in a nationally recognised form, or
  - (ii) a standard form prepared or approved by the ACE(LDS), or
  - (iii) is otherwise in a form approved by the ACE(LDS); and
- (c) any variations to approved forms of Contract must themselves be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence

6.4 Only the ACE(LDS) (or a Legal and Democratic Services’ Officer (LDSO) authorised by the ACE(LDS)) may seal a Contract on behalf of the Council, in each case being satisfied that there is appropriate authority to do so.

## **7. BONDS AND LIQUIDATED DAMAGES**

7.1 Where appropriate Directors (in consultation with the CD-SR) shall consider whether to include provision for the payment of liquidated damages by a Contractor for breach of Contract. Such consideration shall be recorded in the Gateway Process (Stage 1).

7.2 Where considered appropriate by a Director (in consultation with the CD-SR), the Contractor will be required to provide a performance bond to secure the performance of the Contract. Such performance bonds should provide for a sum of not less than 10% of the total value of the Contract or such other sum as the CD-SR considers appropriate.

- 7.3 Agreements made under Section 38 (adoption of new highways) or Section 278 (development of existing highways) of the Highways Act 1980 shall always include provision for a bond in respect of such sum as the Corporate Director Business and Environmental Services shall consider appropriate except where:-
- (a) the identity of the developer renders the need for a bond unnecessary, or
  - (b) adequate alternative security is provided, or
  - (c) the Corporate Director Business and Environmental Services (in consultation with the CD-SR) agrees that it is inappropriate for a bond to be required.

## **8. BIDS**

- 8.1 Where the estimated value of a Contract is £25,000 or less the invitation of Bids is not mandatory, but written Bids should be invited where appropriate and best value should always be sought. If an Officer is not seeking three Bids then the Best Value Form must be completed to capture the rationale for this decision.
- 8.2 If the estimated value of a Contract exceeds £25,000 but is less than the appropriate EU Threshold, Bids must be invited from all potential Contractors in accordance with **Rule 2.11, Tables 1-3**. A notice advertising the opportunity shall be published through the E-Sourcing System and on Contracts Finder and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract, how the ITB documents may be obtained and the closing date for receipt of Bids by the Council.
- 8.3 All potential Contractors invited to submit Bids shall be provided in all instances with identical information and instructions. Where considered appropriate, Directors may permit potential Contractors who have been invited to submit Bids under **Rule 8.2** to also submit variant Bids (i.e. Bids which do not comply with some or all of the requirements of the primary Bid). The same opportunity to submit variant Bids must be given to all potential Contractors.
- 8.4 A written Bid may only be considered if:-
- (a) it has been received electronically through the E-Sourcing System, or
  - (b) (where permitted in exceptional circumstances) it has been received in a sealed envelope marked "Bid" and indicating the subject matter of the Bid and
  - (c) it has been opened after the expiry of the deadline for submissions and at the same time as other Bids for the same subject matter in the presence of at least two Officers authorised to open Bids..
- 8.5 Before Bids with a value in excess of £25,000 are requested the evaluation criteria must be recorded in writing in the ITB evaluation model. The evaluation criteria must be identified and the weighting between price and quality established and stated in the request for Bids sent to Participants.
- 8.6 If a Bid other than the most economically advantageous Bid is to be accepted, the written approval of the Director (in consultation with the CD-SR or if the relevant Director is the CD-SR, in consultation with the Chief Executive) shall be sought and obtained before the Bid is accepted.

8.7 A Bid cannot be accepted where the value exceeds the relevant EU Threshold. If the value of the Bid exceeds the relevant EU Threshold a Director must seek tenders in accordance with **Rules 10 and 11**.

8.8 Before a Contract is awarded after a Bid exercise such steps shall be taken by the Responsible Officer, in conjunction with the CD-SR, as are reasonably necessary (having regard to the subject matter, value, duration of the Contract and other relevant factors) to complete a risk assessment of the potential Contractor's financial stability.

8.9 Bids may be altered only in accordance with **Rule 9**.

## **9. POST BID NEGOTIATION AND CLARIFICATION**

9.1 Post Bid negotiations may not be undertaken where the value of the Contract exceeds the relevant EU Threshold. If the value of a Bid exceeds the relevant EU Threshold, the Director must invite tenders in accordance with **Rules 10 and 11**.

9.2 Post Bid negotiations with selected Participants shall only be carried out where:-

- (a) post Bid negotiations are permitted by law; and
- (b) the Director in consultation with the DPC considers that added value may be obtained; and
- (c) post Bid negotiations are conducted by a team of suitably experienced Officers approved by the Director who have been trained in post Bid negotiations; and
- (d) a comprehensive, written record of the post Bid negotiations is kept by the Director; and
- (e) a clear record of the added value to be obtained as a result of the post Bid negotiations is incorporated into the Contract with the successful Participant.

9.3 **Rules 9.1 and 9.2** shall not operate to prevent clarification of all or part of any Bid to the extent permitted by law and where such clarifications are sought the provisions of **Rules 9.2 (c) and 9.2 (d)** shall apply, except that the word "clarification" shall be substituted for the word "negotiation" in these Rules.

## **10. OJEU TENDERS**

10.1 Tenders for Contracts which exceed the EU Threshold shall be invited and awarded in accordance with the PCRs and as prescribed in **Rule 10 and 11**.

### **General Requirements**

10.2 Before an OJEU Tender is requested the evaluation criteria to be applied to the OJEU Tender must be recorded in writing in the ITT evaluation model. The evaluation criteria must be identified and the weighting between price and quality established and stated in the ITT sent to Participants.

10.3 Irrespective of the procurement process being undertaken an OJEU notice must be published through the E-Sourcing system.

10.4 All Participants invited to submit OJEU Tenders shall be provided in all instances with identical instructions and information.

- 10.5 Where considered appropriate, a Director may, in consultation with the DPC, permit Participants to submit variant OJEU Tenders (i.e. tenders which do not comply with some or all of the requirements of the primary tender). The same opportunity to submit variant OJEU Tenders shall be given to all Participants. Variant OJEU Tenders shall only be considered if the Participant also submits a compliant primary tender.
- 10.6 The evaluation of the OJEU Tender submissions shall be carried out by Officers who are considered appropriate having regard for the subject matter and value of the Contract.

## 11. OPTIONS FOR OJEU TENDER

- 11.1 The Gateway Process shall identify which of the following OJEU Tender processes shall be used to invite tenders for Contracts with a value in excess of the relevant EU Threshold:
- (i) the Open Procedure (as prescribed by Regulation 27)
  - (ii) the Restricted Procedure (as prescribed by Regulation 28)
  - (iii) the Competitive Procedure with Negotiation (as prescribed by Regulation 29)
  - (iv) the Competitive Dialogue Procedure (as prescribed by Regulation 30)
  - (v) the Innovation Partnership Procedure (as prescribed by Regulation 31)
  - (vi) Negotiated Procedure without prior publication (as prescribed by Regulation 32)
  - (vii) Framework Agreement (as prescribed by Regulation 33)
  - (viii) Dynamic Purchasing System (as prescribed by Regulation 34)
  - (ix) Electronic auctions (as prescribed by Regulation 35)
  - (x) Electronic catalogues (as prescribed by Regulation 36)
  - (xi) Light Touch Regime (as prescribed by Regulations 74-76)

and such identified process shall be used for the invitation of OJEU Tenders in accordance with the requirements of the PCR's.

## 12. RECEIPT AND OPENING OF OJEU TENDERS

- 12.1 A written OJEU Tender may only be considered if:-
- (a) it has been received electronically through the E-Sourcing System; or
  - (b) (where permitted under Regulation 84 (h)) it has been received in hard copy in a sealed envelope marked "OJEU Tender" and indicating the subject matter of the OJEU Tender, and the identity of the Participant cannot be ascertained from the tender envelope; and
  - (c) (subject to **Rule 12.4**) it has been received by the OJEU Tender closing date and time
- 12.2 The ACE(LDS) (or a person designated by him) shall be responsible for the reception and safe custody of OJEU Tenders until they are opened.
- 12.3 OJEU Tenders, whether electronic or hard copy must be opened at the same time and in the presence of the ACE(LDS) (or a person designated by him) or, where Legal and Democratic Services is undertaking the procurement, the CD-SR (or an Officer designated by him). The E-Sourcing System records the date and time of the OJEU Tender opening, the identity of the Officer(s) present, the identities of the Participants and the tendered sums. Where permitted under Regulation 84 (h) and

OJEU Tenders are returned in hard copy format a written record shall be maintained of the OJEU Tenders received. Such a record shall include the date and time of OJEU Tender opening, the identity of the Officer(s) present, the identities of Participants and the tendered sums (where readily ascertainable). A copy of such a record shall be provided as soon as practicable to the Director inviting the OJEU Tenders for audit purposes.

- 12.4 If an OJEU Tender is received after the specified closing date and time it may not be considered unless the ACE(LDS) is satisfied that the OJEU Tender was submitted electronically or posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Participant.

### **13. OJEU TENDER EVALUATION AND ACCEPTANCE**

- 13.1 The Director shall evaluate OJEU Tenders using the evaluation model published in accordance with **Rule 10.2**.
- 13.2 Only in exceptional circumstances agreed by the ACE(LDS) can an OJEU Tender other than the MEAT be accepted. In these circumstances a signed and dated record of the reasons for the action taken shall be made within the Gateway Process (Stage 3).
- 13.3 If, as a result of the OJEU Tender evaluation process the Director is satisfied that an arithmetical error has been made inadvertently by a Participant such an error may, after clarification with the Participant, be corrected. The Director shall record any such clarification in writing.
- 13.4 Before a Contract is awarded the Director shall, in consultation with the CD-SR, complete a risk assessment to ascertain the financial stability of the successful Participant. The risk assessment shall take into account the subject matter, complexity, duration, value and any other such factors as may be deemed to be relevant. This shall be undertaken in accordance with the Gateway Process (Stage 3).
- 13.5 On completion of the evaluation of the OJEU Tenders received and once all internal approvals have been obtained through the Gateway Process (Stage 3), the Director shall write to all Participants informing them of the outcome of the OJEU Tender evaluation and providing feedback on the content of their submission, in accordance with Regulation 55 of the PCRs.
- 13.6 The Director shall wait a minimum of ten days (15 days if not sent electronically) from the date of issue of the letters notifying the Participants of the result of the evaluation before completing the Contract with the successful Participant.
- 13.7 The Director shall send for publication a Contract Award Notice stating the outcome of the procurement procedure no more than 30 days after the award of the Contract.

### **14. CERTIFICATION OF CONTRACTS**

- 14.1 The Local Government (Contracts) Act 1997 clarified the power of local authorities to enter into certain Contracts, including Private Finance Initiative Contracts. Where Contracts need to be certified under the 1997 Act, only the following Officers are authorised to do so: the Corporate Director Children and Young People's Service, the Corporate Director Business and Environmental Services, the Corporate Director Health and Adult Services, the Director of Public Health, the ACE(LDS) and the CD-SR.

## 15. EXCEPTIONS TO CONTRACT PROCEDURE RULES

15.1 A Director does not need to invite bids in accordance with **Rule 8**, in the following circumstances:-

- (a) purchases via Framework Agreements which have been established either by the Council or by other public sector bodies or consortia (including, but not limited to YPO) and where such framework agreements are lawfully accessible to the Council. Contracts awarded from such Framework Agreements shall be awarded in accordance with the provisions of that Framework Agreement; or
- (b) the instruction of Counsel by the ACE(LDS); or
- (c) where a grant or other external funding is received by the Council, either in its own right or as an accountable body, and the terms of such grant or other external funding state that such grant or other external funding must be applied in accordance with the terms of such grant or other external funding; or
- (d) purchases at public auctions (including internet auction sites, e.g. Ebay) where the Director is satisfied that value for money will be achieved; or
- (e) the purchase of Supplies, Works, Services or Social and Other Specific Services which are of such a specialised nature as to be obtainable from one Contractor only; or
- (f) repairs to or the supply of parts for existing proprietary machinery or plant where to obtain such supplies from an alternative supplier would invalidate the warranty or contractual provisions with the existing supplier; or
- (g) Social or Other Specific Services Contracts where:-
  - (i) the service is currently supplied by a Contractor to the satisfaction of the relevant Corporate Director, is considered to be offering value for money and where the foreseeable disruption to service users cannot justify the invitation of further bids, or
  - (ii) the service is of a specialist or personal nature and where service users must be involved in the selection of the Contractor and where the Corporate Director Health and Adult Services and the Corporate Director Children and Young People's Service considers it inappropriate for bids to be invited, or
  - (iii) where the relevant Corporate Director is satisfied that the urgency of the need for the service prevents the invitation of bids in which case consideration shall be given to the duration of that service; or
- (h) Contracts where the Director with the agreement of the CD-SR agree that for reasons of extreme urgency brought about by unforeseeable events un-attributable to the Council, the timescales for obtaining bids cannot be met. A written record shall be signed and dated by the Director, whenever this Rule applies.

15.2 Where any of the exceptions set out in **(d) to (h)** above are applied a Directors Recommendation, in consultation with the relevant DPC, shall be signed, dated and

kept. The Director shall maintain a register of all recommendations made under this Rule.

15.3 A Director does not need to invite OJEU tenders in accordance with **Rule 10 and 11**, in the following circumstances:-

(a) purchases via Framework Agreements which have been established either by the Council or by other public sector bodies or consortia (including, but not limited to YPO) and where such Framework Agreements are lawfully accessible to the Council. Contracts awarded from such Framework Agreements shall be awarded in accordance with the provisions of that Framework Agreement. Where appropriate Officers should apply a minimum 10 day standstill period for all call-off Contracts awarded under an existing Framework Agreement. This is not mandatory but is deemed best practice; or

(b) where:

- (i) Regulations 12 or 72 of the PCRs apply; or
- (ii) any other specific exclusions as set out in the PCRs apply;

and the ACE(LDS), the relevant Director and CD-SR are in agreement. A written record shall be signed and dated whenever this Rule applies and the Director shall maintain a register of such written records.

### **Waivers**

15.4 Specific exceptions to **Rule 8** are permitted in such other circumstances as the CD-SR and the ACE(LDS) may agree.

15.5 Requests for waivers shall be made using the Waiver Request Form prescribed by the ACE(LDS) and the CD-SR which shall specify the reasons for the request.

15.6 The ACE(LDS) shall maintain a register of all requests made under this Rule and the responses given to them.

15.7 Specific exemptions to **Rule 10 and 11** may be permitted in exceptional circumstances as the ACE(LDS) and CD-SR may agree in accordance with the PCRs. The ACE(LDS) shall maintain a register of all requests made under this Rule and the responses given to them.

### **16. COMPLIANCE, CONTRACT REGISTER AND FORWARD PROCUREMENT PLANS**

16.1 Every Officer shall comply with these Rules and any unauthorised failure to do so may lead to disciplinary action.

16.2 The CD-SR shall be responsible for monitoring adherence to these Rules.

16.3 Each Director shall nominate a representative to act as a key contact point in relation to procurement matters for the Directorate; such representatives shall be termed DPCs.

16.4 Each Director, CPG and/or the DPCs shall take all such steps as are reasonably necessary to ensure that Officers within their Directorate are aware of and comply with these Rules, the Procurement Manual and the Finance Manual referred to in **Rule 2.5**.

- 16.5 DPCs are responsible for the production of a FPP which will be completed in such format as CPG shall require.
- 16.6 The DPCs shall each present an updated FPP to their respective directorate management teams quarterly for approval throughout the year.
- 16.7 An annual report on procurement matters, such report to include an annual procurement plan and actions arising from the annual procurement plan, will be presented to a meeting of the Corporate and Partnership Overview and Scrutiny Committee.
- 16.8 The Council maintains a Contract Register the purpose of which is to record key details of all Contracts with an aggregate value of £25,000 or more.
- 16.9 DPCs shall ensure that:-
- (a) all relevant Contracts (including those Contracts to which **Rule 15** applies) are entered onto the Contract Register
  - (b) the Contract Register is maintained by entering new Contracts onto it and removing expired Contracts from it in line with the Council's Records Retention and Destruction Schedule.

#### **Contracts Finder**

- 16.10 When a Contract in excess of £25,000 is awarded the Director shall ensure that such information as is prescribed in the PCRs is published on Contracts Finder via the E-Sourcing system.

#### **17. GATEWAY PROCESS REPORTS INCLUDING NOTIFICATION OF SECTION 151 OFFICER AND MONITORING OFFICER**

- 17.1 When a procurement is being considered which is expected to exceed the financial value thresholds specified in **Rule 17.2** then the Responsible Officer must complete the Gateway Process report for consideration by the relevant Directorate Management Team and the ACE(LDS) or the relevant Director, the Assistant Director with responsibility for finance within that Directorate, the ACE(LDS) and the DPC. No procurement should commence before the Gateway Process report is approved. The report shall include the estimated "whole life" financial value of the Contract, the procurement methodology and any other relevant factors including, but without limitations, any TUPE implications. The Assistant Director with responsibility for finance will enter details on a register of procurements approved under this Rule which will be available to the CD-SR and the ACE(LDS).
- 17.2 The whole Contract financial value thresholds for the purposes of **Rule 17.1** are:
- (a) Works Contracts - £1m
  - (b) Social and Other Specific Services Contracts - £625,050.
  - (c) Supplies and Services Contracts - £172,514
- 17.3 No action leading towards procurement, including any steps to undertake a further competition under an existing framework arrangement, shall be undertaken until confirmation of the process has been given under the terms set out in **Rule 17.1**.

## **18. CONTRACT MONITORING**

- 18.1 The Responsible Officer shall take all such steps as are appropriate to monitor and review the performance of the Contract, having regard to its value, nature, duration and subject matter. As part of the monitoring and review process the Responsible Officer shall maintain adequate records of Contract performance and details of review meetings with the Contractor. Such records and details shall be made available to Internal Audit whenever required and shall be recorded in any relevant Gateway Process report (Stage 4). Such records shall also be used on the basis for any permitted extension to the Contract.

### **Contract Variation**

- 18.2 Contracts with a value below the relevant EU Threshold may be varied in accordance with the terms of that Contract. Any proposed variations which have the effect of materially changing the Contract must be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence.
- 18.3 Contracts with a value in excess of the relevant EU Threshold may be varied in accordance with the terms of that Contract or as outlined in Regulation 72 of the PCRs. Any proposed variations which have the effect of materially changing the Contract must be approved by the ACE(LDS), whether or not they are effected by amending the Contract itself or by correspondence.

### **Contract Termination**

- 18.4 If an Officer requires a Contract which exceeds the financial values stated in **Rule 17.2** to be terminated then this must be done in accordance with the terms of the Contract. Approval must be sought in accordance **Rule 17.1** (Gateway Process Stage 4b).

## **19. TRAINING FOR PROCUREMENT**

- 19.1 Where appropriate any Officer involved in procurement activities shall have received a level of formal training commensurate with the nature of the procurement activity being undertaken.

## **20. DECLARATION OF INTERESTS**

- 20.1 If it comes to the knowledge of a Member, Responsible Officer or other Officer that a Contract in which he has an interest (determined in accordance with the Members' and/or Officers' Code of Conduct as appropriate) has been or is proposed to be entered into by the Council, he shall immediately give written notice to the ACE(LDS).

## **21. GRANTS**

- 21.1 A Director shall consider when procuring the provision of the Services, Supplies Works or Social & Other Specific Services, whether a Grant would be a preferable means to achieving its objectives rather than following a competitive Bid process.
- 21.2 Where the value of a Grant exceeds £25,000, the Director shall have the discretion to conduct a competitive application process for the award of that Grant if doing so demonstrates best value for the Council. If a Director is not conducting a competitive application process then the Best Value Form must be completed to capture the rationale for the decision.

21.3 Where the value of a Grant exceeds the relevant EU Threshold, the Director shall complete the Gateway Process in accordance with **Rule 17**.