

NORTH YORKSHIRE COUNTY COUNCIL

AUDIT COMMITTEE

2nd March 2017

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 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 the 18th May 2017, subject to Executive and Full Council approval.

3.0 PROPOSED FUTURE CHANGES

- 3.1. The Rules govern how we procure goods, works and services and align to The Public Contract Regulations 2015.
- 3.2. The Public Contract Regulations 2015 and the councils Rules 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

- 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 Public Contract Regulations 2015 support the Council in delivering this vision and the amendments to the Rules in 2016 embraced the new flexibilities. After operating under the new governance for a year, and based on consultation feedback from Officers undertaking low value procurements and procurement professionals delivering high value/ complex procedures, further changes are recommended. The changes aim to provide clarity and support the council’s commercial ambitions.

4.0 KEY CHANGES

Alignment to the new Procurement and Contract Management Service

- 4.1. The main changes throughout reflect the new Procurement and Contract Management Service structure. The Rules have been amended to ensure clarity over the portfolio responsibility which sits with the Corporate Director, Strategic Resources (CD-SR), with delegated responsibility to the Head of Procurement and Contract Management.

Evaluation procedure

- 4.2. A new rule has been included, Rule 10.7, to offer clarity and ensure a robust procedure is undertaken in relation to the evaluation of OJEU tenders. The Rule outlines the responsibility of the commissioning service, specifically around the number of evaluation panel members and process to follow including:
- individual evaluation assessment and scoring;
 - consensus marking, which must be chaired by a member of the Procurement and Contract Management Service;
 - the moderation process;
 - circumstances in which independent verification is required.

The above are all key requirements for ensuring and evidencing an open, fair and transparent process and mitigating risk of legal challenge.

Authorisations

- 4.3. Rule 17.1 has been amended and includes a table to clearly outline the Officer approvals required in relation to each “gate” within the procurement gateway process. Due to the high value, potential complexity and procurement risks associated with these procurements, Director or Directorate Management Team and Assistant Chief Executive Legal & Democratic Services approval is required.

Grants

- 4.4. Rule 21 was a new addition in the last round of changes. The inclusion of guidance around the administering of grants has proven helpful to Officers, however it is acknowledged that there remains a degree of ambiguity in relation to the circumstances in which allocating a grant is permissible. This rule has been expanded to clearly outline the circumstances in which a Grant would be a preferable means to achieving the council's objectives rather than following a competitive Bid / Tender process. This guidance is based on best practice from the National Audit Office.
- 4.5. Further to this, a new rule has been included in relation to the requirement to monitor and review the performance of grant agreements, having regard to its value, nature, duration and subject matter. This will ensure the council is getting value for money from the grant and that the objectives are being delivered.

IR 35 – Tax and NI requirements

- 4.6. From April 2017, where an Officer is hiring or engaging a worker who is not on the council payroll there is a legal requirement to determine whether it is the responsibility of the Council to deduct employee tax and national insurance (NI) at source and associated employer (NI, in accordance with the legal requirements of IR35. This requirement has been inserted into the revised Rules to provide clarity and ensure compliance.

Transparency

- 4.7. We will continue to ensure transparency of forthcoming expenditure for contracts using the Forward Procurement Plan (FPP) and the national Contracts Finder system, which is published to all potential suppliers to raise awareness of opportunities to work with the council.
- 4.8. 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.

Small and Medium Enterprise (SMEs)

- 4.9. Through our procurement initiatives, including the Corporate Procurement Strategy, we are continuing to ensure that SMEs have access to NYCC contract opportunities, encouraging ways to make 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.
- 4.10. Through transparency, such as the procurement pipeline, we continue to give businesses timely information, to support investment in skills and capabilities to deliver contracts. We are actively encouraging SMEs to work collaboratively, where deemed appropriate, to deliver contracts.

- 4.11. The prominence of market engagement continues to gain momentum and through our commissioning and procurement cycle, early market intelligence from SMEs and the voluntary and community sector in particular is helping to develop the overarching strategy forward. Moving forward this intelligence will be instrumental in the development of category sourcing strategies in terms of identifying innovative approaches to meeting customer and business needs.
- 4.12. The simplified processes introduced through the last round of changes continue to operate and as such support SMEs as the process is less bureaucratic; time/resource intensive and less costly.

5.0 RECOMMENDATIONS

- 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.

Gary Fielding
Corporate Director, Strategic Resources

Author of Report –

Gary Fielding
Corporate Director, Strategic Resources

and

Kevin Draisey
Head of Procurement and Contract Management
16 February 2017

Appendix 1

CONTRACT PROCEDURE RULES

SUGGESTED AMENDMENTS

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Not currently included	CM means the Corporate Contracts Manager.	To provide clarity.
		CPG means the Corporate Procurement Group	Delete	Under the new procurement structure this group will be replaced with the Procurement Assurance Board.
		Not currently included	DMT means the Directorate Management Team	To provide clarity.
		DPC means a Directorate Procurement Champion	Delete	Under the new procurement structure this role will be replaced with the role of Senior Category Manager.
		Not currently included	HoP means the Head of Procurement	To provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		Not currently included	PAB means the Procurement Assurance Board, chaired by the HoP.	To provide clarity.
		PQQ means the Pre-Qualification Questionnaire	Delete	The PQQ has been replaced by the Selection Questionnaire, therefore no longer applicable.
		Not currently included	PSBO means Public Sector Buying Organisation	To provide clarity.
		Not currently included	SCM means Senior Category Manager	To provide clarity.
		Not currently included	SQ means the Selection Questionnaire	To provide clarity.
		YPO means the Yorkshire Purchasing Organisation	Delete	This has been replaced by the wider definition and reference to Public Sector Buying Organisations.
2.5	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	The CD-SR has 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.	Removed reference to the ACE(LDS). In practice the Procurement

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		should be read in conjunction with the Procurement Manual.		Manual is maintained by the HoP role which reports into the CD-SR.
2.10	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).	Wherever appropriate procurement shall be undertaken using the standard precedent documents contained in the Procurement Manual applying to SQ's, ITT's or ITBs. Wherever alternative documents are to be used they must be approved by the CD-SR and where appropriate the ACE(LDS).	Removed reference to PQQ as this is no longer applicable. Documentation governance is the responsibility of the HoP role which reports into the CD-SR, therefore amended from Director.
9.2	9.2	Post Bid negotiations with selected Participants shall only be carried out where:- (b) the Director in consultation with the DPC considers that added value may be obtained; and	Post Bid negotiations with selected Participants shall only be carried out where:- (b) the Director in consultation with the HoP considers that added value may be obtained; and	Removed reference to DPC as this role no longer exists, replaced with HoP to provide clarity.
10.5	10.5	Where considered appropriate, a Director may, in consultation with the DPC, permit Participants to	Where considered appropriate, the HoP may, in consultation with the SCM, permit Participants to submit variant OJEU Tenders (i.e. tenders which do not comply with some or all of the	Replaced reference to

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		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.	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.	Director with HoP to provide clarity. DPC reference removed and replaced with SCM in line with new structure.
N/A	10.7	Not currently included	All Tenders undertaken in accordance with Rule 10 shall have a minimum of 3 appropriate Officers (excluding the Procurement and Contract Management Service representative) to undertake the evaluation process. The evaluation process will include: <ul style="list-style-type: none"> • Individual evaluation assessment and scoring • Consensus marking exercise, chaired by a member of the Procurement and Contract Management Service • Moderation, where required • Independent verification, where required and in accordance with the Gateway process, Gate 3. 	To ensure a robust process and provide clarity.
12.2	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.	The CD-SR (or a person designated by him) shall be responsible for the reception and safe custody of OJEU Tenders until they are opened.	Amended ACE(LDS) to CD-SR to enable procurement to open OJEU tenders.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
				The system is fully auditable and an automatic record maintained to ensure due process, therefore no longer a requirement for Legal to complete this process.
12.3	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 OJEU Tender opening, the identity of the Officer(s) present, the identities of	OJEU Tenders, whether electronic or hard copy must be opened at the same time and in the presence of the CD-SR) (or a person designated by him) or, where the Procurement and Contract Management Service is undertaking the procurement, the ACE(LDS) (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) of the PCRs and OJEU Tenders are returned in hard copy format a written record shall be maintained by the HoP, of the OJEU Tenders received. Such 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).	To provide clarity. This change reflects the new structure and the systems in place to support a fully auditable process.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>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.</p>		
13.1	13.1	<p>The Director shall evaluate OJEU Tenders using the evaluation model published in accordance with Rule 10.2.</p>	<p>The Responsible Officer shall evaluate OJEU Tenders using the evaluation model published in accordance with Rule 10.2.</p>	<p>Amended reference from Director to Responsible Officer to provide clarity.</p>
13.2	13.2	<p>Only in circumstances where an OJEU Tender is agreed by the CD-SR in consultation with the ACE(LDS) to be an abnormally low</p>	<p>Only in circumstances where an OJEU Tender is agreed by the CD-SR to be an abnormally low tender in accordance with the PCR's can an OJEU Tender other than the MEAT be accepted. In those circumstances a signed and dated record of the reasons</p>	<p>Amended reference from ACE(LDS) to CD-SR as</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		tender in accordance with the PCR's can an OJEU Tender other than the MEAT be accepted. In those circumstances a signed and dated record of the reasons for the action taken shall be made within the Gateway Process (Stage 3).	for the action taken shall be made within the Gateway Process (Gate 3).	procurement governance sits under the CD-SR portfolio, therefore provides clarity. In reality ACE(LDS) only signs off Gateway 1 currently.
13.3	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 correction in writing.	If, as a result of the OJEU Tender evaluation process the HoP 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 HoP shall record any such clarification in writing.	Amended reference from Director to HoP to provide clarity.
13.4	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	Before a Contract is awarded the HoP shall, in consultation with the SCMs, determine whether it is proportionate and appropriate to 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 recorded in accordance with the Gateway Process (Gate 3), where appropriate.	Amended reference from Director and CD-SR to HoP and SCM to reflect new structure and provide clarity of process.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		shall be undertaken in accordance with the Gateway Process (Stage 3).		
13.5	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 PCR's.	On completion of the evaluation of the OJEU Tenders received and once all internal approvals have been obtained through the Gateway Process (Gate 3), the HoP 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.	Amended reference from Director to HoP to provide clarity.
13.6	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.	The HoP 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.	Amended reference from Director to HoP to provide clarity.
13.7	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.	The HoP 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.	Amended reference from Director to HoP to provide clarity.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
15.1	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 by other public sector bodies or consortia (including, but not limited to YPO) and where such framework agreements are lawfully accessible to the Council, except where the requirements of the individual framework require a further competition to be conducted; or	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 PSBOs) 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	Amended reference from YPO to PSBOs to provide clarity.
15.1	15.1	(h) 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.	(h)Contracts where the Director with the agreement of the HoP 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.	Amended reference from CD-SR to HoP to provide clarity.
15.2	15.2	Where any of the exceptions set out in (d) to (h) above are applied a Directors Recommendation, in consultation with the relevant	Where any of the exceptions set out in (d) to (h) above are applied a Directors Recommendation, in consultation with the relevant SCMs, shall be signed, dated and kept. The	Amended reference from DPC to SCM.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
		<p>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.</p>	<p>whenever this Rule applies and the Procurement and Contract Management Service shall maintain a register of such written records.</p>	<p>Procurement and Contract Management Service to provide clarity.</p>
15.5	15.5	<p>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.</p>	<p>Requests for waivers shall be made using the Waiver Request Form prescribed by the CD-SR which shall specify the reasons for the request.</p>	<p>Removed reference to ACE(LDS). CD-SR has portfolio responsibility for procurement governance which includes documentation templates.</p>

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
15.6	15.6	The ACE(LDS) shall maintain a register of all requests made under this Rule and the responses given to them.	The CD-SR shall maintain a register of all requests made under this Rule and the responses given to them.	Removed reference to ACE(LDS). Procurement governance is the responsibility of the CD-SR, therefore provides clarity.
15.7	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.	Delete	This is a repetition of Rule 15.3 (b). Provides clarity.
16.3	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 " Directorate Procurement Champions " in this Rule.	The HoP shall nominate a representative to act as a key contact point in relation to procurement matters for spend categories; such representatives shall be termed SCMs.	Amended reference from Director to HoP and amended DPC to SCM. Included reference to spend categories in order

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
				to align to new structure. Provides clarity.
16.4	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 Rule 2.5 .	Each Director, in conjunction with the HoP, shall take all such steps as are reasonably necessary to ensure that Officers within Directorates are aware of and comply with these Rules, the <i>Procurement Manual</i> and the <i>Finance Manual</i> referred to in Rule 2.5.	Removed reference to CPG and DPC as no longer applicable. Provides clarity.
16.5	16.5	DPC's are responsible for the production of a FPP which will be completed in such format as CPG shall require.	SCMs are responsible for the production of a spend category FPP which will be completed in such format as the HoP shall require.	Amended reference from DPC to SCM. Removed reference to CPG as no longer applicable and superseded with HoP. Includes reference to FPPs being category based in line with the new structure.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
16.6	16.6	The DPC's shall each present an updated FPP to their respective directorate management teams quarterly for approval throughout the year.	The SCMs shall each present an updated category FPP to the relevant directorate management teams every 6 months for approval.	Amended to category FPPs in line with new structure. Amended reporting frequency to 6 monthly.
16.7	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.	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 Audit Committee.	This meeting has never been attended. Amended to Audit Committee.
16.9	16.8	DPC's shall ensure that:-	CM shall ensure that	Amended reference from DPC to CM to provide clarity.
16.10	16.9	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.	When a Contract in excess of £25,000 is awarded the Procurement and Contract Management Service shall ensure that such information as is prescribed in the PCRs is published on Contracts Finder via the E-Sourcing system.	Amended reference from Director to the Procurement and Contract Management

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason								
				Service to provide clarity.								
17.1	17.1	<p>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 necessary 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</p>	<p>When a procurement is being considered which is expected to exceed the financial value thresholds specified in Rule 17.2 the Gateway Process must be completed and signed off by the relevant Officers, as detailed in Table 4 below.</p> <p>Table 4: Gateway Process – Authorisation to Approve</p> <table border="1" data-bbox="1003 676 1753 1259"> <thead> <tr> <th data-bbox="1003 676 1395 715">Gateway Process gate</th> <th data-bbox="1395 676 1753 715">Approval process</th> </tr> </thead> <tbody> <tr> <td data-bbox="1003 715 1395 986">Gate 1 – Options Appraisal / Project Initiation Document</td> <td data-bbox="1395 715 1753 986">PAB AND The relevant Director or DMT – <i>Procurement Assurance Board to decide as appropriate.</i> AND The ACE(LDS)</td> </tr> <tr> <td data-bbox="1003 986 1395 1054">Gate 2 – Authorisation of Documents</td> <td data-bbox="1395 986 1753 1054">SCM</td> </tr> <tr> <td data-bbox="1003 1054 1395 1259">Gate 3 – Contract Award</td> <td data-bbox="1395 1054 1753 1259">PAB AND The relevant Director or DMT – <i>Procurement Assurance Board to decide as appropriate.</i></td> </tr> </tbody> </table>	Gateway Process gate	Approval process	Gate 1 – Options Appraisal / Project Initiation Document	PAB AND The relevant Director or DMT – <i>Procurement Assurance Board to decide as appropriate.</i> AND The ACE(LDS)	Gate 2 – Authorisation of Documents	SCM	Gate 3 – Contract Award	PAB AND The relevant Director or DMT – <i>Procurement Assurance Board to decide as appropriate.</i>	To provide clarity on process and authorisations.
Gateway Process gate	Approval process											
Gate 1 – Options Appraisal / Project Initiation Document	PAB AND The relevant Director or DMT – <i>Procurement Assurance Board to decide as appropriate.</i> AND The ACE(LDS)											
Gate 2 – Authorisation of Documents	SCM											
Gate 3 – Contract Award	PAB AND The relevant Director or DMT – <i>Procurement Assurance Board to decide as appropriate.</i>											

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment		Reason	
		available to the CD-SR and the ACE(LDS).		<p>Gate 4(a) – Contract Extension/Variation</p> <p>PAB AND The relevant Director or DMT – <i>Procurement Assurance Board to decide as appropriate.</i> AND, where appropriate ACE(LDS) – <i>only in cases where the extension is not part of the original contract or where the variation is a material change.</i></p>	<p>PAB AND The relevant Director or DMT – <i>Procurement Assurance Board to decide as appropriate.</i></p>	
17.3	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 .		<p>Stage 4(b) – Contract Termination (during the contract period)</p> <p>PAB AND The relevant Director or DMT – <i>Procurement Assurance Board to decide as appropriate.</i></p>		To provide clarity that a gateway is not required where using an existing NYCC established framework.

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
18.1	18.1	<p>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.</p>	<p>The Responsible Officer and the CM, in relation to all corporate contracts, 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/CM 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 (Gate 4). Such records shall also be used on the basis for any permitted extension to the Contract.</p>	<p>Included reference to the CM responsibility for Corporate Contracts to provide clarity.</p>
18.3	18.3	<p>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),</p>	<p>Contracts with a value in excess of the relevant EU Threshold may be varied or extended in accordance with the terms of that Contract or as outlined in Regulation 72 of the PCRs. Approval must be sought in accordance with Rule 17.1, (Table 4 - Gateway process – Authorisation to Approve Gate 4a).</p>	<p>To be provide clarity and reference the amendments to Rule 17.1 as detailed above.</p>

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.		
18.4	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 with Rule 17.1 (Gateway Process Stage 4b).	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 (Table 4 – Gateway process – Authorisation to Approve Gate 4b).	To provide clarity.
21.1	21.1	A Director shall consider when procuring the provision of the Services, Supplies Works or Social and Other Specific Services, whether a Grant would be a preferable means to achieving its objectives rather than following a competitive Bid process.	<p>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. A grant may only be awarded in circumstances where:</p> <ul style="list-style-type: none"> • There is the legal power to make a grant for the purpose envisaged; • It does not contravene EU rules on state aid. 	<p>Additional information provided to add clarity to scenarios where a grant is appropriate.</p> <p>To provide clarity.</p>
N/A	21.4	Not currently included	The Responsible Officer shall take all such steps as are appropriate to monitor and review the performance of the grant agreement, having regard to its value, nature, duration and subject matter. As part of the grant monitoring and review process the Responsible Officer shall maintain adequate records	To provide clarity to Officers that grant agreements must be monitored, highlighting

Old Rule No.	New Rule No.	Current Wording	Proposed Amendment	Reason
			of performance and details of review meetings with the grant recipient.	importance of contract management.
N/A	22.1	Not currently included	Where an Officer is hiring or engaging a staff member who is not on the Council payroll there is a legal requirement to determine whether it is the responsibility of the Council to deduct tax and national insurance at source, in accordance with the requirements of the Social Security Contributions (Intermediaries) Regulations 2000, as amended (IR35).	To provide clarity on new requirements.

Contract Procedure Rules

CONTENTS

1. Introduction
2. General
3. Compliance with Legislation and Standards
4. Powers and Key Decisions
5. Form of Contract
6. Signature/Sealing of Contracts
7. Bonds and Liquidated Damages
8. Bids
9. Post Bid Negotiations and Clarification
10. Tenders
11. Options for Tender
12. Receipt and Opening of Tenders
13. Tender Evaluation and Acceptance
14. Certification of Contracts
15. Exceptions to Contract Procedure Rules
16. Compliance, Contract Register and Forward Procurement Plan
17. Gateway Process Reports including Notification of Section 151 Officer and Monitoring Officer
18. Contract monitoring
19. Training for Procurement
20. Declaration of Interests
21. Grants
22. Hiring and Engaging Staff

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:-

ACE(LDS)	means Assistant Chief Executive (Legal and Democratic Services)
Best Value Form	means the form to be completed to capture the rationale for not seeking bids in accordance with Rule 8.1
CD-SR	means the Corporate Director - Strategic Resources
Constitution	means the Council's Constitution of which these Rules form part.
Contract	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 Rule 2.2
Contracts Finder	means the web-based portal as described in the PCRs
CM	means the Corporate Contracts Manager.
Contract Register	means the register of Contracts maintained by the Council as set out in Rule 16.8
Contractor	means a person or entity with whom the Council has a Contract
Council	means North Yorkshire County Council
DMT	means the Directorate Management Team
Director	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
Directors Recommendation	means a written record of the decision and justification to apply one of the exceptions set out in Rule 15.1 to be signed and kept by the relevant Director
E-Sourcing system	means the Council's chosen E-sourcing system (currently YORtender) or an approved alternative
EU	means the European Union

EU Threshold	means the current threshold above which the PCR's apply, currently £164,176 for services and supplies £589,148 for social and other specific services and £4,104,394 for works
FPP	means the Forward Procurement Plan which outlines all future procurement requirements of the Council
Framework Agreement	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"> (i) multiple orders to be placed with one Contractor (a single supplier framework), or (ii) a framework of multiple Contractors to engage in further competitions (a multiple supplier framework)
Gateway Process	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
HoP	means the Head of Procurement
Internal Audit	means the Council's appointed internal auditors (currently Veritau)
ITB	means an Invitation to Bid
ITT	means an Invitation to Tender
Key Decision	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 [insert hyperlink]
Leasing Agreement	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
LDSO	means a Legal and Democratic Services Officer
MEAT	means the Most Economically Advantageous Tender
Member	means a member of the Council or co-opted member on a Council committee
Officer	means a Council employee or other authorised agent
OJEU	means the Official Journal of the European Union
OJEU Tender	means the procurement process to be followed where the estimated whole life value of a Contract exceeds the relevant EU Threshold

PAB	means the Procurement Assurance Board, chaired by the HoP.
Participant	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
PCR	means the Public Contracts Regulations 2015
Person	means any individual, partnership, company, trust, other local authority, Government department or agency
Procurement Manual	means the manual to accompany these Rules which provides detailed guidance on procurement techniques and the effect of the Rules
Procurement Strategy	means the Council's Procurement Strategy as agreed from time to time.
Property Contract	means a Contract which creates an estate or interest in land or buildings
PSBO	means Public Sector Buying Organisation
Responsible Officer	means the Officer who is responsible for the procurement and/or management of a Contract
Rules	means these Contract Procedure Rules
SCM	means Senior Category Manager
Services or Supplies	means as defined in Regulation 2 of the PCRs
Social and Other Specific Services	means those services defined as such in Schedule 3 of the PCRs
SQ	means the Selection Questionnaire
Waiver Request Form	means the prescribed form to be completed when requesting a waiver in accordance with Rule 15.4
Works	means as defined in Regulation 2 of the PCRs

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, 8.6, 15.1(d), (g) and (h), 15.3(b), 15.4, 15.5, 16.2 and 17.1**
 - (iii) ACE(LDS) - **Rules 2.1, 2.4, 8.6, 15.3(b), 15.4, 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 has 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 SQ's, ITT's or ITBs. Wherever alternative documents are to be used they must be approved by the CD-SR 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)

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).
£25,000 up to EU Threshold (currently £172,514)	Bids must be invited in accordance with Rule 8 . 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 Rules 10 and 11 . 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). AND 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 Rule 6 .

Table 2: Works

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 £4,322,012 for Works)	Bids must be invited in accordance with Rule 8 . 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).

Total Contract Value	Award Procedure	Signature/Sealing Contract
		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 Rule 6 .
Above Threshold (currently £4,322,012 for Works)	EU Follow the appropriate EU Procedure as set out in Rules 10 and 11 . 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 Rule 6 .

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 Rule 8 . 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 Threshold (currently £625,050)	EU Follow the appropriate EU Procedure as set out in Rules 10 and 11 . 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). AND 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 Rule 6 .

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) or CD-SR 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 (Gate 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 HoP 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, the HoP may, in consultation with the SCM, 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.
- 10.7 All Tenders undertaken in accordance with **Rule 10** shall have a minimum of 3 appropriate Officers (excluding the Procurement and Contract Management Service representative) to undertake the evaluation process. The evaluation process will include:
- Individual evaluation assessment and scoring
 - Consensus marking exercise, chaired by a member of the Procurement and Contract Management Service
 - Moderation, where required
 - Independent verification, where required and in accordance with the Gateway process, Gate 3.

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 CD-SR (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 CD-SR) (or a person designated by him) or, where The Procurement and Contract Management Services is undertaking the procurement, the ACE(LDS) (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) of the PCRs and OJEU Tenders are returned in hard copy format a written record shall be maintained by the HoP, of the OJEU Tenders received. Such 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).
- 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 Responsible Officer shall evaluate OJEU Tenders using the evaluation model published in accordance with **Rule 10.2**.
- 13.2 Only in circumstances where an OJEU Tender is agreed by the CD-SR to be an abnormally low tender in accordance with the PCR's can an OJEU Tender other than the MEAT be accepted. In those circumstances a signed and dated record of the reasons for the action taken shall be made within the Gateway Process (Gate 3).
- 13.3 If, as a result of the OJEU Tender evaluation process the HoP 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 HoP shall record any such clarification in writing.
- 13.4 Before a Contract is awarded the HoP shall, in consultation with the SCMs, determine whether it is proportionate and appropriate to 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 recorded in accordance with the Gateway Process (Gate 3), where appropriate.
- 13.5 On completion of the evaluation of the OJEU Tenders received and once all internal approvals have been obtained through the Gateway Process (Gate 3), the HoP 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 HoP 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 HoP 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. EXEMPTIONS 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 PSBOs) 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 HoP 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 SCMs, shall be signed, dated and kept. The Procurement and Contract Management Service 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 PSBO's) 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 Procurement and Contract Management Service 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 CD-SR which shall specify the reasons for the request.
- 15.6 The CD-SR 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 The HoP shall nominate a representative to act as a key contact point in relation to procurement matters for spend categories; such representatives shall be termed SCMs.
- 16.4 Each Director, in conjunction with the HoP, shall take all such steps as are reasonably necessary to ensure that Officers within Directorates are aware of and comply with these Rules, the Procurement Manual and the Finance Manual referred to in **Rule 2.5**.
- 16.5 SCMs are responsible for the production of a spend category FPP which will be completed in such format as the HoP shall require.
- 16.6 The SCMs shall each present an updated category FPP to the relevant directorate management teams every 6 months for approval.
- 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 Audit 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 CM 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 Procurement and Contract Management Service 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** the Gateway Process must be completed and signed off by the relevant Officers, as detailed in Table 4 below.

Table 4: Gateway Process – Authorisation to Approve

Gateway process Gate	Approval process
Gate 1 – Options Appraisal /Project Initiation Document	PAB. AND The relevant Director or DMT. AND The ACE(LDS).
Gate 2 – Authorisation of Documents	SCM.
Gate 3 – Contract Award	PAB. AND The relevant Director or DMT.

Gate 4(a) – Contract Extension/Variation	PAB. AND The relevant Director or DMT; AND, where appropriate ACE(LDS) – <i>only in cases where the extension is not part of the original contract or where the variation is a material change.</i>
Gate 4(b) – Contract Termination (during the contract period)	PAB; AND The relevant Director or DMT.

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 - £589,148.
- (c) Supplies and Services Contracts - £164,176

17.3 No action leading towards procurement, including any steps to undertake a further competition under an existing PSBOs framework arrangement or other legally compliant framework agreement accessible by the Council, 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 and the CM, in relation to all corporate contracts, 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/CM 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 (Gate 4). Such records shall also be used on the basis for any permitted extension to the Contract.

Contract Variation/Extension

18.2 Contracts with a value below the relevant EU Threshold may be varied or extended 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 or extended in accordance with the terms of that Contract or as outlined in Regulation 72 of the PCRs. Approval must be sought in accordance with Rule 17.1, (Table 4 - Gateway process – Authorisation to Approve Gate 4a).

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** (Table 2 – Gateway process – Authorisation to Approve Gate 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. A grant may only be awarded in circumstances where;

- There is the legal power to make a grant for the purpose envisaged;
- It does not contravene EU rules on state aid.

- 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.

- 21.4 The Responsible Officer shall take all such steps as are appropriate to monitor and review the performance of the grant agreement, having regard to its value, nature, duration and subject matter. As part of the grant monitoring and review process the Responsible Officer shall maintain adequate records of performance and details of review meetings with the grant recipient.

22.0 HIRING AND ENGAGING STAFF

- 22.1 Where an Officer is hiring or engaging a staff member who is not on the Council payroll there is a legal requirement to determine whether it is the responsibility of the Council to deduct tax and national insurance at source, in accordance with the requirements of the Social Security Contributions (Intermediaries) Regulations 2000, as amended (IR35).