

The Report of the Executive

The Executive met on Tuesday, 21 February 2017. County Councillor Carl Les in the Chair. County Councillors Arthur Barker, David Chance, Gareth Dadd, Don Mackenzie, Janet Sanderson and Clare Wood.

Also in attendance: County Councillors Janet Jefferson and Richard Welch.

The Executive met on Tuesday, 7 March 2017. County Councillor Carl Les in the Chair. County Councillors Arthur Barker, David Chance, Gareth Dadd, Don Mackenzie, Chris Metcalfe, Janet Sanderson and Clare Wood.

Also in attendance: County Councillors John Clark and Elizabeth Shields.

The Executive met on Tuesday, 28 March 2017. County Councillor Carl Les in the Chair. County Councillors Arthur Barker, Gareth Dadd, Don Mackenzie, Chris Metcalfe, Janet Sanderson and Clare Wood.

Also in attendance: one media representative.

The Executive met on Tuesday, 25 April 2017. County Councillor Carl Les in the Chair. County Councillors Arthur Barker, David Chance, Gareth Dadd, Don Mackenzie, Chris Metcalfe, Janet Sanderson and Clare Wood.

1. Funding of Community Pharmacies – response of the Scrutiny of Health Committee to the Motion at County Council on 9 November 2017: The Executive on 25 April 2017 considered the response of the North Yorkshire Scrutiny of Health Committee to the Notion of Motion on the funding of community pharmacies, which was put to County Council on 9 November 2016. The full report considered is attached at pages 23 to 25.

The Executive RECOMMENDS:

- (a) That the North Yorkshire Scrutiny of Health Committee maintains a watching brief on the impact of Government reductions to community pharmacy funding over the next two years, with regular updates to the Scrutiny of Health.
- (b) That the North Yorkshire Scrutiny of Health Committee works with Public Health and other agencies and organisations to consider ways in which the potential impact of the reductions in funding can be better understood, in particular:
 - The impact upon GPs and A&E.
 - The impact upon vulnerable people.
 - The impact upon people living in the more deprived areas of the county.

2. Review of the Contract Procedure Rules: At the meeting held on 28 March 2017, the Executive considered a number of proposed amendments to the Contract Procedure Rules (CPR), recommended by the Audit Committee following its meeting on 2 March. The report to that Executive meeting and the table of proposed amendments to the CPR considered by it and now recommended to full Council for approval are available at pages 21 to 69. The proposed amendments have subsequently been incorporated into the most recent version of the CPR, attached at pages 49 - 69 for ease of reference.

The key proposed changes relate to reflecting the new Procurement and Contract Management Service, evaluation procedure, authorisations, grants, IR 35 Tax and NI requirements, transparency and small and medium enterprises.

Since reporting to the Executive on 28 March, a few additional, minor proposed amendments to the CPR, consistent with those already set out in the amendments table, have been identified and are set out below for consideration:

- (a) Amend the reference to the new rule 16.8 in the table of amendments to 16.9 ('CM shall ensure that') for accuracy;
- (b) Amend the reference to the new rule 16.9 in the table of amendments to 16.10 ('When a contract in excess of £25,000 is awarded ...') for accuracy;
- (c) Amend item 12 in the CPR Contents page to read 'Receipt and Opening of OJEU Tenders' (including the word 'OJEU' for reasons of clarity and consistency);
- (d) Amend the 'Framework Agreement' definition in section 1 (Introduction) to read as follows (referring to 'one or more contracting authorities and one or more economic operator' rather than 'one or more public sector bodies' for reasons of clarity and consistency):

Framework Agreement means an agreement with one or more contracting authorities and one or more economic operator which establishes an arrangement for:

- (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)
- (e) Amend CPR 1.2(e) as follows, to reflect changes to authorisations and consequential cross references and thereby provide clarity regarding responsibilities of officers:

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(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).

- (f) Amend CPR 5.2 to read as follows, to provide for liaison with CDSR regarding the acceptance of different terms and conditions:

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.

- (g) Amend CPR 14.1 to read as follows, to include, for clarity, reference to the Director of Public Health and ACE(LDS):

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.

- (h) Amend CPR 18.2 to read as follows, including the words 'or extended', for reasons for clarity:

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.

The Executive RECOMMENDS:

That the proposed changes to the Contract Procedure Rules as set out in the table of amendments at pages 30 to 48, and as set out above, be approved.

3. Audit of Outside Bodies: The Executive on 25 April 2017 considered the outcome of the audit which is undertaken every four years prior to the County Council Election. It is an administrative exercise to ensure that the information is accurate in readiness for appointments to be made following the Election. The full report considered is attached at pages 70 to 72 - the changes to be made are set out at paragraphs 2.1 to 2.5. An addendum to the report relating to the inclusion of Citizens Advice Hambleton, Richmondshire and Selby was also considered, with a further recommendation that one representative from the County Council is appointed in future rather than three, and that the appointment is re-categorised as one to which the Executive appoints. (Currently three Area Committees appoint to three seats, but now the number of the seats is reduced to one, and there is no mechanism

whereby three Area Committees may jointly appoint one Member.)

The Executive RECOMMENDS:

- (a) That the list of outside bodies in the County Council's Constitution be amended as set out at pages 70 to 72 of the report, and in (b) below;
- (b) That Citizens Advice Hambleton, Richmondshire and Selby is included within the list of outside bodies within the County Council's Constitution with one seat – the appointment to be made by the Executive in future.

4. Any other appointments required - not covered under item 8

North Yorkshire Health and Wellbeing Board – Membership 2017-2021

No.	Current Representative	Organisation	Comments
County Councillors (3)			
1	Portfolio Holder	NYCC	Leader to appoint by virtue of portfolio.
2	Portfolio Holder	NYCC	
3	Portfolio Holder	NYCC	
Elected Member District Council Representative (1)			
4	Councillor Richard Foster	Leader, Craven District Council	TBC
Local Authority Officers (5)			
5	Richard Flinton, Chief Executive	NYCC	Statutory Members
6	Richard Webb Corporate Director HAS	NYCC	
7	Pete Dwyer Corporate Director CYPs	NYCC	
8	Lincoln Sargeant, Director Public Health	NYCC	
9	Janet Waggott, Chief Executive	Ryedale District Council NOTE: Chief Officer District Council Representative	TBC

No.	Current Representative	Organisation	Comments
Clinical Commissioning Groups (5)			
10	Colin Renwick	Airedale, Wharfedale & Craven CCG	Statutory Members
11	Janet Probert	Hambleton, Richmondshire and Whitby CCG	
12	Amanda Bloor	Harrogate and Rural District CCG	
13	Phil Mettam	Vale of York CCG	
14	Simon Cox	Scarborough and Ryedale CCG	
Other Members (3)			
15	Shaun Jones	NHS England	Statutory Member "for certain Items"
16	Vacancy – Healthwatch, North Yorkshire	Healthwatch North Yorkshire	Statutory Member – nominee to be sought
17	Alex Bird, Chief Executive Officer	Age UK, North Yorkshire	Voluntary Sector Representative – TBC for the future
Co-opted Members – Voting (2)			
18	Colin Martin, Chief Executive	Tees, Esk and Wear Valleys NHS Foundation Trust	Provider Representatives – TBC for the future
19	Ros Tolcher, Chief Executive	Harrogate District Hospital	

The Executive RECOMMENDS:

That the membership of the North Yorkshire Health and Wellbeing Board is noted.

COUNTY COUNCILLOR CARL LES
Chairman

County Hall,
NORTHALLERTON.
9 May 2017

North Yorkshire County Council

Executive

25 April 2017

Funding of Community Pharmacies – response of the Scrutiny of Health Committee to the Motion at County Council on 9 November 2017**Purpose of Report**

This report provides Executive with the response of the North Yorkshire Scrutiny of Health Committee to the Motion on the funding of community pharmacies, which was put to County Council on 9 November 2016. This includes recommendations that the North Yorkshire Scrutiny of Health Committee: 1) maintains a watching brief; and 2) works with Public Health and others to better understand the potential impact of the reductions in funding.

Background

1. A new contract for community pharmacies was imposed by the Government in October 2016, despite widespread opposition from professional bodies, including the Pharmaceutical Services Negotiating Committee. In 2016/17, Government funding has been cut by 4% and 2017/18 will see a reduction of 3.4%. Further cuts are expected thereafter.
2. A Notice of Motion was discussed at County Council on 9 November 2016, as below:

Motion 4 – North Yorkshire County Council notes that 121 Pharmacies in North Yorkshire offer a range of services such as dispensing prescriptions, disposal of unwanted medicines and supporting self-care. Pharmacies play an important role in promoting wellbeing such as healthy eating, smoking cessation, exercise, flu vaccination, sexual health, falls supervised consumption and more. Advice and support services are also available to care homes North Yorkshire County Council is greatly concerned about Government imposed threats to pharmacies as a result of cuts in the budget of £170m nationally to take effect from October 2016. This is a 6% cut in cash terms but could effectively mean a cut of 12% during the financial year which could potentially close up to a quarter of pharmacies, with an increased focus on warehousing dispensary and online services.

Service cuts in pharmacies put more residents at risk as well as putting pressure on GPs and on hospital services and therefore increasing NHS costs. A fully funded community pharmacy service is cost effective and is in the interest of patients and carers.

North Yorkshire County Council:

agrees to write to the Secretary of State for Health, NHS England and Hambleton, Richmondshire and Whitby, Harrogate and Scarborough and Ryedale Clinical Commissioning Group detailing the concerns and demanding an immediate reversal of these proposals.

Proposed by County Councillor David Billing
Seconded by County Councillor Eric Broadbent

3. The Notice of Motion was discussed and the decision was taken to refer the matter to the North Yorkshire Scrutiny of Health Committee for investigation.

Scrutiny of Health Mid-Cycle Briefing – 16 December 2017

4. Jack Davies, Chief Executive Officer, Community Pharmacy North Yorkshire (Local Pharmaceutical Committee) gave a presentation to the Mid-Cycle Briefing outlining the changes to funding that had been introduced by the Government and the potential impacts.

5. The potential short term and long term impacts of the changes to community pharmacy funding that were discussed are summarised, as below:

- Around 23 pharmacies will be protected from the full effect of funding reductions for the first two years but there is uncertainty about what level of protection will be in place thereafter.
- At this stage, there are no planned closures of community pharmacies but the services that they provide are likely to change, as funding is reduced. Concerns have been raised that some community pharmacies will have to:
 - Reduce opening hours and staffing levels
 - End free services, such as the home delivery of medicines
 - Reduce investment in facilities and services
 - Reduce stock held on the premises, with the result that people may not be able to get the medicine they need then and there.
- There is also likely to be an impact upon GPs and A&E, as patients who would have previously used their community pharmacy may end up being forced to go elsewhere.
- It is likely that over the next 3 to 5 years a number of community pharmacies in North Yorkshire will either be merged or close. The concern is that this will be in the more deprived or rural areas of the county.

6. In response, Members raised the following issues:

- Community pharmacies are businesses and as such a degree of competition is to be expected and encouraged.
- In some areas of the county there are a number of community pharmacies all on the same street or in the same immediate area. As such, it may make sense for there to be some rationalisation of provision and a re-distribution of funding.
- There is a concern that any closures or mergers will be in the more remote areas of the county or those that are more deprived.
- The reduction in free services may have a significant impact upon both patients and carers.
- The consequent reduction in the provision of tests and screening, setup as part of a national programme of prevention and early intervention, could lead to increased costs to the NHS in the longer term.
- The funding cuts seem to run contrary to previous NHS advice focussed on encouraging people to use community pharmacies, instead of going to the GP or A&E.

7. The Members at the Mid Cycle Briefing resolved:

- To maintain a watching brief on the impact of Government reductions to community pharmacy funding over the next 2 years, with regular updates to the Scrutiny of Health Committee.
- To work with Public Health and other agencies and organisations to consider ways in which the potential impact of the reductions in funding can be better understood, in particular:
 - The impact upon GPs and A&E
 - The impact upon vulnerable people
 - The impact upon people living in the more rural and deprived areas of the county.

Responding to the Notice of Motion

8. The details of the discussions at the Mid Cycle Briefing and the actions that Members resolved to take were formally approved at the meeting of the North Yorkshire Scrutiny of Health Committee on 27 January 2017.
9. Subject to a discussion at Executive on 25 April 2017, it is proposed that the response to the Notice of Motion from the North Yorkshire Scrutiny of Health Committee goes to the County Council at their meeting of 17 May 2017, as part of the Executive Report.

Recommendations

1. That the North Yorkshire Scrutiny of Health Committee:
 - a. Maintains a watching brief on the impact of Government reductions to community pharmacy funding over the next 2 years, with regular updates to the Scrutiny of Health Committee.
 - b. Works with Public Health and other agencies and organisations to consider ways in which the potential impact of the reductions in funding can be better understood, in particular:
 - The impact upon GPs and A&E
 - The impact upon vulnerable people
 - The impact upon people living in the more deprived areas of the county.
2. That the Executive report back to County Council on this issue at the next meeting on 17 May 2017.

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8 March 2017

NORTH YORKSHIRE COUNTY COUNCIL

EXECUTIVE

28th 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. This report was presented and approved by the Audit Committee on 2nd March 2017.
- 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**. The complete proposed Rules are set out in **Appendix 2**.
- 2.4. This report seeks to give members of the Executive an overview of the thinking behind the proposed changes which will take effect from the 18th May 2017, subject to 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, the 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 Executive 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
10 March 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	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.	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.	Included reference to the CM responsibility for Corporate Contracts to provide clarity.
18.3	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),	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).	To be provide clarity and reference the amendments to Rule 17.1 as detailed above.

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

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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:-

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
CM	means the Corporate Contracts Manager
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
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
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
DMT	means the Directorate Management Team
Electronic Signatures	means an advanced electronic signature which is: (i) uniquely linked to the signatory; and

	(ii) capable of identifying the signatory; and
	(iii) created using means that the signatory can maintain under his/her sole control; and
	(iv) linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.
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 set out in Article 13.03(b) of the Constitution [http://democracy.northyorks.gov.uk/]
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
PSBO	means Public Sector Buying Organisation
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
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 quotations) 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 £164,176)	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 £164,176)	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 .
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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 £4,104,394 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). 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 EU Threshold (currently £4,104,394 for Works)	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 £589,148)	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 £589,148)	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 outlined 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.

6.5 Signatures may be affixed to a Contract either using physical, handwritten means or an Electronic Signature, as appropriate and in accordance with both UK and European law.

6.6 Electronic Signatures may only be affixed using the Council’s chosen electronic signature system or an approved alternative.

6.7 The use of Electronic Signatures is not permitted in circumstances where:

- (a) the Contract is to be sealed;
- (b) a physical handwritten signature needs to be filed;
- (c) there is a proviso in the Contract which prevents the use of an Electronic Signature;
- (d) the Contract may need to be enforced in a jurisdiction where Electronic Signatures are not accepted;
- (e) the Contract needs to be notarised.

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 receipts 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 lowest or 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 the 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 tender 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 and 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 Procurement (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 OJEU Tender opening, the identity of the Officer(s) present, the identities of Participants and the tendered sums. Where permitted under Regulation 84(h) of the PCR's and OJEU Tenders are returned in hard copy format a written record shall be maintained by the HoP, 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).
- 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 PCR's.
- 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. 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 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 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.
- 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 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 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 – <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>
Gate 4(a) – Contract Extension/Variation	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>
Stage 4(b) – Contract Termination (during the contract period)	PAB AND The relevant Director or DMT – <i>Procurement Assurance Board to decide as appropriate.</i>

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

- 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 with **Rule 17.1** (Table 4 - 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 Thresholds, 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).

North Yorkshire County Council

Executive

25 April 2017

Audit of Outside Bodies

1.0 Purpose of the Report

- 1.1 To report the outcome of an audit of the outside bodies on which the County Council is represented, as listed in the County Council's Constitution, and to present consequent amendments to the list for consideration.

2.0 Audit of Outside Bodies listed in NYCC's Constitution

- 2.1 Democratic Services have carried out an audit of the outside bodies to which the County Council, Executive and Area Committees make appointments. These outside bodies are listed in Schedule 5 of Part 3 of the County Council's Constitution. Appointments to these bodies are due to be made immediately following next month's election. The audit has identified various changes which are set out in the four sub-paragraphs below.
- 2.2 Outside bodies which have recently been disbanded or on which a County Council representative is no longer required.

It is recommended that these outside bodies, as set out in the table below, be deleted from the list of outside bodies in the County Council's Constitution.

Name of Outside Body	Reason for Recommending Deletion
Northallerton (Thursday) Adoption Panel	The legal requirement to have a councillor sat on each Adoption Panel was removed in 2011. Adoption is becoming regionalised and therefore will act as a body outside of the local authority from September 2017. Therefore there is no requirement to have councillors sat on current or future adoption panels.
Northallerton (Tuesday) Adoption Panel	
Central Fostering Panel	The number of Fostering Panels has been reduced from 3 to 2 by disbanding the Central Fostering Panel
Chain Lane Social Enterprise Ltd Knaresborough Board	Disbanded
Greater Ripon Improvement Partnership	Scheduled to cease trading
Groundwork North Yorkshire	Has merged with another organisation and a NYCC appointment is no longer required
Harrogate (White Rose) Theatre Trust Ltd	A NYCC representative is no longer required
Leeds City Region Leaders' Board	Disbanded

Local Government Yorkshire and Humber – Council	Disbanded
University of Hull – Court	The University Court ceased to be a formally constituted body of the University in 2014
Yorkshire and Humberside Regional Broadband Joint Committee	Disbanded
Yorkshire Libraries and Information	Disbanded
Harrogate District Action for the Environment Group	Disbanded
Harrogate District Local Strategic Partnership	Disbanded
Harrogate District Sports Council	Disbanded
Nidderdale Pool and Leisure Centre Joint Management Board	Hasn't met for a number of years
North Yorkshire Coast Community Partnership	Disbanded
Richmond Swale Valley Community Initiative	Disbanded
Captain Cook Schoolroom Museum	Now operates as a Charitable Incorporated Organisation and a NYCC appointment is not required
Hartley Education Foundation (Long Preston/Hellified)	Is organising itself into a Charitable Incorporated Organisation and a NYCC appointment is not required
Settle Area Swimming Pool Committee	Has received approval to re-register as a Charitable Incorporated Organisation and a NYCC appointment is not required

- 2.3 Outside bodies which have changed the number of representatives the County Council is invited to appoint.

It is recommended that number of NYCC representatives on outside bodies be amended, within the list of outside bodies within the County Council's Constitution, as described in the following table.

Name of Outside Body	Amendment to the number of representatives NYCC may appoint
Breckenbrough School Limited	"2 + Sub" to be amended to "2"
Drax Power Station Consultative Committee	"Up to 9 + Subs" to be amended to "4 + Subs"
Foster Panel (East)	"2" to be amended to "1"
North Yorkshire Local Access Forum	"3" to be amended to "2"
North York Moors National Park Local Access Forum	"1" to be amended to "1 + Sub"
North Yorkshire Youth Limited Board of Trustees	"1 + Sub" to be amended to "1"
Outdoor Learning Service Consultative Committee	"4" to be amended to "3 + Sub"
Safer Ryedale Delivery Team	"1" to be amended to "1 + Sub"
Safer District Association for Voluntary Services	"1" to be amended to "1 + Sub"

Horton-in-Ribblesdale Exhibition Foundation Governors	"2" to be amended to "1"
Raikes Foundation (Pateley Bridge)	"1" to be amended to "2"

- 2.4 Outside bodies whose titles have changed eg Robin Hood Airport Consultation Committee is now called Doncaster/Sheffield Airport Consultative Committee. A full list of such changes is available on request.

It is recommended that authority be delegated to the Assistant Chief Executive (Legal and Democratic Services) to amend the titles of outside bodies set out in the County Council's Constitution to reflect the titles which those bodies have notified to Democratic Services.

- 2.5 New outside body

County Councillors have been serving, for many years, on the Management Committee of Yorkshire Purchasing Organisation (YPO). For the last few years, County Councillor Don Mackenzie has also represented the County Council as a Director on the YPO Procurement Holdings Limited.

It is recommended that the list of outside bodies in the County Council's Constitution be amended by the inclusion of the appointment of one County Councillor on the YPO Procurement Holdings Limited, this appointment to be made by the County Council's Executive

3.0 Summary of Outside Body Recommendations

- 3.1 That the Executive consider the recommendations to amend the list of outside bodies listed in the County Council's Constitution, as set out in bold font in paragraphs 2.1, 2.2, 2.3, 2.4 and 2.5 of this report, for commendation to County Council 17 May 2017.

Barry Khan
Assistant Chief Executive (Legal and Democratic Services)
County Hall
Northallerton

13 April 2017

JOD/RAG

Background documents: None