

North Yorkshire County Council

18 November 2020

The Report of the Executive

1.0 Purpose of the Report

- 1.1 To provide County Council with details of reports received, decisions made and recommendations to County Council by the Executive since the last meeting of the County Council on 22 July 2020.

2.0 Details of meetings

- 2.1 The following sections provide details of decisions made and recommendations to County Council by the Executive since the last meeting of the County Council on 22 July 2020. The meetings were held on the following dates: 28 July 2020; 25 August 2020; 13 October 2020 and 3 November 2020.

The meeting of the Executive that was scheduled on 22 September 2020 was cancelled due to a lack of business.

All of the meetings were live broadcast and the recordings of the meetings are available via the following link - <https://www.northyorks.gov.uk/live-meetings>

2.2 28 July 2020 Executive (Performance Monitoring) Meeting

The Executive met on Tuesday 28 July 2020. It was a live broadcast meeting using Skype and OBS software. County Councillor Carl Les in the Chair, plus County Councillors David Chance, Gareth Dadd, Caroline Dickinson, Andrew Lee, Don Mackenzie, Patrick Mulligan, Janet Sanderson and Greg White.

Other Councillors Present: County Councillors Derek Bastiman, John Ennis, Stanley Lumley, Janet Jefferson, Karin Sedgwick, Annabel Wilkinson, David Goode and David Blades.

Apology received from County Councillor Michael Harrison.

Substantive agenda items were:

- Quarter 4 Performance and Budget Monitoring
- Quarter 1 Performance Report
- Devolution Deal for North Yorkshire and York
- Northallerton High Street Parking
- Healthy Choices - This report considered in private session.

The link to the reports and minutes from this meeting is as follows:

<https://democracy.northyorks.gov.uk/committees.aspx?commid=18&meetid=4419>

2.3 25 August 2020 Executive (Performance Monitoring) Meeting

The Executive met on Tuesday 25 August 2020. It was a live broadcast meeting using Skype and OBS software. County Councillor Carl Les in the Chair, plus County Councillors David Chance, Gareth Dadd, Caroline Dickinson, Michael Harrison,

Andrew Lee, Don Mackenzie, Patrick Mulligan, Janet Sanderson and Greg White.

Other Councillors Present: County Councillors Paul Haslam.

Substantive agenda items were:

- Quarter 1 Budget Monitoring Report
- Consideration of Proposed Amendments to the Council's Constitution
- Recommissioning of the Targeted Healthy Child Programme
- Appointments to Committees and Other Bodies
- Transfer of a Contracted Support Living Service to NYCC Social Care Provider Services - This item considered in private session.

The link to the reports and minutes from this meeting is as follows:

<https://democracy.northyorks.gov.uk/committees.aspx?commid=18&meetid=4301>

2.4 **13 October 2020 Executive Meeting**

The Executive met on Tuesday 13 October 2020. It was a live broadcast meeting using MS Teams and OBS software. County Councillor Carl Les in the Chair, plus County Councillors David Chance, Gareth Dadd, Caroline Dickinson, Michael Harrison, Andrew Lee, Don Mackenzie, Patrick Mulligan, Janet Sanderson and Greg White.

Other Councillors Present: County Councillors Paul Haslam

Substantive agenda items were:

- The Future of the Healthy Child Programme
- Superfast North Yorkshire Phase 4
- Appointments to Committees and Other Bodies
- Report on Changes to Constitution
- Feedback from meetings of the Area Constituency Committees.

The link to the reports and minutes from this meeting is as follows:

<https://democracy.northyorks.gov.uk/committees.aspx?commid=18&meetid=4293>

2.5 **3 November 2020 Executive Meeting**

The Executive met on Tuesday 3 November 2020. It was a live broadcast meeting using MS Teams and OBS software. County Councillor Carl Les in the Chair, plus County Councillors David Chance, Gareth Dadd, Caroline Dickinson, Michael Harrison, Andrew Lee, Don Mackenzie, Patrick Mulligan, Janet Sanderson and Greg White.

Other Councillors Present: County Councillors Derek Bastiman, Jim Clark, Caroline Goodrick, Paul Haslam, Janet Jefferson, Mike Jordan, Geoff Webber and Annabel Wilkinson.

Substantive agenda items was:

- To approve the submission of a unitary proposal for North Yorkshire to the Secretary of State for Housing, Communities and Local Government

The link to the reports and minutes from this meeting is as follows:

<https://democracy.northyorks.gov.uk/committees.aspx?commid=18&meetid=4459>

3.0 Recommendations by Executive for approval/information at County Council

The following recommendations were made by Executive at the above meetings for approval and/or information at County Council:

3.1 Consideration of Proposed Amendments to the Council's Constitution

This item was considered at Executive on 25 August 2020. Executive was asked to recommend to County Council for approval proposed changes to the Constitution.

A copy of the report on Proposed Amendments to the Council's Constitution is available at Appendix A, pages 20 to 62.

The Executive RECOMMENDS:

That:

- (a) the proposed changes to the Constitution set out in the Amendments Chart at Appendix 1; and
- (b) the proposed changes to the Procurement and Contract Procedure Rules, set out in Appendices 2 and 3

be proposed to full Council for approval.

3.2 Consideration of Proposed Amendments to the Council's Constitution

This item was considered at Executive on 13 October 2020. Executive was asked to recommend to County Council for approval proposed changes to the Constitution.

A copy of the report on Proposed Amendments to the Council's Constitution is available at Appendix B, pages 65 to 68.

The Executive RECOMMENDS:

That the proposed changes to the Constitution, as set out in Appendix 1, be recommended to full Council for approval.

3.3 Appointment to Committees and Other Bodies

The following appointments to the North Yorkshire Health and Wellbeing Board are for County Council to note:

The Executive met on 25 August 2020 and approved the appointment of Andrew Brodie, Chief Fire Officer, North Yorkshire Fire and Rescue Service, as the Emergency Services representative and Dr Sally Tyrer, Chair of the North Yorkshire Local Medical Committee, as the representative of Primary Care.

The Executive met on 13 October 2020 and approved the appointment of Brent Kilmurray,

Chief Executive of Tees, Esk and Wear Valleys NHS Foundation Trust, as the representative of Mental Health Trusts and Michelle Waugh, Locality Manager, as the nominated deputy representative for the NHS England and NHS Improvement (North East and Yorkshire).

The Executive RECOMMENDS:

That County Council notes the appointments to the North Yorkshire Health and Wellbeing Board.

CARL LES
Leader
County Hall
Northallerton

10 November 2020

Appendix A to Item 7

North Yorkshire County Council

EXECUTIVE

25 August 2020

Proposed Changes to the Constitution for Recommendation to County Council

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0 **PURPOSE OF REPORT**

- 1.1 To present to Members, for their consideration for recommendation to full Council for approval, proposed changes to the Constitution.

2.0 **BACKGROUND**

- 2.1 The Constitution is maintained by the Monitoring Officer and kept under review on an ongoing basis. This report sets out amendments required to the Constitution to keep it up to date.

3.0 **AMENDMENTS TO THE CONSTITUTION**

- 3.1 The more substantive items for consideration are the subject of separate sections in this report. Other proposed miscellaneous changes to the Constitution are set out in the table of proposed amendments set out at **Appendix 1**.

4.0 **PROCUREMENT AND CONTRACT PROCEDURE RULES**

- 4.1 The substantive changes to the Procurement and Contract Procedure Rules (PCPR) are summarised below and as set out in the table of proposed amendments at **Appendix 2**. The annotated version of the Procurement and Contract Procedure Rules is at **Appendix 3**.

4.2 **Transparency and Decision Making**

The Council believes in public access to information in order to ensure that citizens can exercise their rights to have a say about decisions, and can understand what decisions have been taken and why. Tables 1-4 within PCPR 2 have been updated to align procurement process to the Access to Information Procedure Rules. The intention of this addition is to provide clarity and promote the responsibilities of Council Officers in relation to decision making in a procurement context.

4.3 **Bonds and Liquidated Damages**

Due to the additional resource pressures on senior management, and to ensure the continued efficient operating of decision making, it is proposed that:

- a) PCPR 7.1 is amended to remove the requirement for Directors, in consultation with the CD-SR, to consider whether to include provision for the payment of liquidated damages by a Contractor for breach of Contract.

- b) PCPR 7.2 is amended to remove the requirement for Directors, in consultation with the CD-SR, to consider whether to include provision of a performance bond to secure the performance of the Contract.

Operationally the responsibility for consideration of these requirements will transfer to Legal Services.

4.4 Evaluation procedure

PCPR 9.10 has been added to provide clarity and ensure a robust procedure is undertaken in relation to the evaluation of bids and tenders. This PCPR outlines the responsibility of the commissioning service, specifically around the suitability and appropriateness of panel members to be involved in the evaluation. This is a key requirement for ensuring an open, fair and transparent process and mitigating risk of legal challenge.

4.5 Certification of Contracts

The Local Government (Contracts) Act (LGCA) 1997 clarified the power of local authorities to enter into certain contracts, including Private Finance Initiative Contracts. PCPR 15.1 has been amended to remove the requirement for any contracts which require certifying under the 1997 Act to be approved by the Executive. It is proposed that those Officers authorised to certify under the LGCA, do so in consultation with the relevant Executive Member.

4.6 EU Procurement thresholds

The EU Procurement thresholds have changed and the revised thresholds needed to be reflected in the Council's Constitution. The Assistant Chief Executive (Legal and Democratic Services) made these amendments and the administrative correction of a paragraph number under his delegated powers to amend the Constitution to ensure that the Constitution and the Council's procedures meet all legal requirements and to correct administrative issues, under Article 15.02(c) of the Constitution and is reporting back to Council about these changes via this report.

5.0 **PROVISIONS REGARDING REGIONAL ADOPTION ARRANGEMENTS**

- 5.1 The Executive has previously been informed of the full Regional Adoption Agency arrangements and developments in relation to the Regional Adoption services programme. Amendments are therefore proposed to the Constitution, as set out in the table of proposed amendments at **Appendix 1**, to reflect those arrangements which are currently in place.

6.0 **OTHER PROPOSED AMENDMENTS**

- 6.1 Other proposed changes to the Constitution are set out in the table of proposed amendments set out at **Appendix 1** to this report, including:
 - (a) Updates to the Appointments to Outside Bodies in Schedule 5
 - (b) Miscellaneous proposed changes in order to keep the Constitution up to date and correct administrative type amendments.

7.0 **FINANCIAL IMPLICATIONS**

- 7.1 There are no specific financial implications arising from this report.

8.0 **LEGAL IMPLICATIONS**

8.1 The legal implications of the proposed amendments to the Constitution are set out in the body of this report and in the Appendices.

9.0 **CONSULTATION**

9.1 Relevant Officers and Members have been consulted on the proposed changes set out in this report and its appendices. The papers were considered at the Members' Working Group on the Constitution on 12 August 2020.

10.0 **REASONS FOR RECOMMENDATIONS**

10.1 For the reasons set out in the Constitution Amendments Chart at **Appendix 1**, the Procurement and Contract Procedure Rules Amendments Chart at **Appendix 2**, the annotated copy of the Procurement and Contract Procedure Rules at **Appendix 3** and in the body of this report, it is recommended that, subject to any comments Members may have, the recommendations and changes to the Constitution set out below be proposed to the County Council for approval.

11.0 **RECOMMENDATIONS**

11.1 That, subject to any comments Members may have:

- (a) the proposed changes to the Constitution set out in the Amendments Chart at **Appendix 1**; and
- (b) the proposed changes to the Procurement and Contract Procedure Rules, set out in **Appendices 2 and 3**

be proposed to full Council for approval.

BARRY KHAN
Assistant Chief Executive (Legal and Democratic Services)

GARY FIELDING
Corporate Director, Strategic Resources

Author of Report –

Kevin Draisey
Head of Procurement and Contract Management

Background Document:

- The Council's Constitution

Appendices:

Appendix 1 – Amendments to the Constitution

Appendix 2 – Summary of amendments to the Procurement and Contract Procedure Rules

Appendix 3 – Annotated copy of the Procurement and Contract Procedure Rules.

APPENDIX 1

Proposed Amendments to Constitution – 2020

Where amendments are suggested to part of a paragraph, only the relevant part is replicated in the amendment chart below.

<u>PART A: ITEMS FOR DECISION</u>			
Provision in Constitution	Current Wording	Proposed Amendment	Reason(s)
Part 3 Responsibility for Functions Schedule 2 The Executive Delegation of Executive Functions by the	... 8. Adoption Panels 8.1 The Executive will appoint one or more panels to discharge the functions of adoption panels under the Adoption Agencies Regulations 2005. Each such panel must include at least one member of the Executive (being an Executive member for Children's Services) or of the Young People Overview and Scrutiny Committee. <i>Note: There are currently two such Panels:</i> <ul style="list-style-type: none"> ◆ <i>The Harrogate Child Placement Panel</i> ◆ <i>The Northallerton Child Placement Panel</i> 	... 8. Adoption Panels 8.1 <u>The Executive delegates its statutory functions in relation to adoption panels pursuant to the Adoption Agencies Regulations 2005 to City of York Council as the host local authority for the Regional Adoption Agency "One Adoption North and Humber" in accordance with the terms of the "One Adoption North and Humber Partnership Agreement".</u>	To ensure that the Constitution reflects current arrangements. The Executive has previously been informed of the full Regional Adoption Agency arrangements and developments in relation to the Regional Adoption services programme. The proposed amendments update the Constitution to reflect those arrangements.
Part 3 Responsibility for Functions Schedule 4 – Officers' Delegation Scheme	... (o) To progress the more detailed implementation work required to establish the Regional Adoption Agency be delegated to the Corporate Director - Children and Young People's Service in consultation with the Executive Member for Children Services.	... (o) <u>To exercise or to delegate to a nominated officer(s), the specified functions of the council as set out in the Regional Adoption Agency "One Adoption North and Humber" partnership agreement and associated documents attached to/referenced within the agreement.</u>	To ensure that the Constitution reflects current arrangements. The Executive has previously been informed of the full Regional Adoption Agency arrangements and developments in relation to the Regional Adoption services

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Deleted: The Executive will appoint one or more panels to discharge the functions of adoption panels under the Adoption Agencies Regulations 2005. Each such panel must include at least one member of the Executive (being an Executive member for Children's Services) or of the Young People Overview and Scrutiny Committee. ¶
 ¶
Note: There are currently two such Panels: ¶
 ¶
 <#>The Harrogate Child Placement Panel ¶
 <#>The Northallerton Child Placement Panel/¶

<p>4.0 Specific Delegations</p> <p>4.2 To the Corporate Director – Children and Young People’s Service</p>			<p>programme. The proposed amendments update the Constitution to reflect those arrangements.</p>
<p>Part 3 Responsibility for Functions Schedule 5 Appointments to Outside Bodies 1. PARTNER BODIES</p>		<p><i>Amend the schedule in section 1. PARTNER BODIES to include reference to:</i></p> <p>Border to Coast Pensions Partnership 1 seat Appointment by the Executive Appointed - CC Mulligan Appointment until May 2021</p>	<p>To reflect appointments which have been made and to keep the Constitution up to date.</p>
<p><u>PART B: ITEMS FOR INFORMATION</u></p>			
		<p><i>Certain typographical/formatting/administrative changes have been made in the Constitution under the Monitoring Officer’s delegated powers as set out in Article 15.02(c)(i) of the Constitution to correct administrative issues.</i></p>	<p>To ensure that the Constitution is accurate and up to date.</p>

Deleted: To progress the more detailed implementation work required to establish the Regional Adoption Agency be delegated to the Corporate Director - Children and Young People’s Service in consultation with the Executive Member for Children Services



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CONTRACT PROCEDURE RULES**PROPOSED AMENDMENTS**

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
		Not currently included.	Please note that any reference within these Rules to the Public Contract Regulations 2015 and any requirement arising from them, and the European Union, remain in force in accordance with the Withdrawal Agreement 2019 until the end of the transition period which is currently due to end 31 December 2020. From the 1st January 2021, any subsequent amendments by Government are to supersede the references within these Rules. Further guidance will be issued by the Procurement and Contract Management Service in due course.	To provide clarity around the implications of Brexit.
1.1		CM means the Contract Manager.	CM means the Contract Manager who is responsible for the contract management role on behalf of the Council.	To provide clarity around the responsibility of the Contract Manager.
1.1		Not currently included.	Concession means as defined in Regulation 3(4) of the Concession Contracts Regulations 2016.	Defined term added.
1.1		Contracts Finder means the web-based portal as described in the PCRs.	Contracts Finder means the web-based portal as described in Chapters 7 & 8 of the Public Contracts Regulations 2015PCRs.	Definition amended to provide clarity.

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
1.1		Contract Management Practitioners Group means the Council's practitioner group responsible for improving contract management standards, chaired by the Contracts Manager.	Contract Management Practitioners Group means the Council's practitioner group responsible for improving contract management standards.	The Contract Management Practitioners Group is chaired by the HoP.
1.1		Not currently included.	Decision Record means a record of a decision produced in accordance with the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012.	Defined term added.
1.1		Directors Recommendation means a written record of the decision and justification to apply one of the exceptions set out in Rule 16.1 to be signed and kept by the relevant Director.	Directors Recommendation means a written record of the decision and justification to apply one of the exceptions set out in Rule 16.1 to be signed by the relevant Director.	Reference to the written record being kept by the relevant Director removed. In practice, Directors Recommendations are held by the Procurement and Contract Management Service.
1.1		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 Agreement means an agreement with one or more contracting authorities and one or more economic operator which establishes an arrangement for:	Definition amended to provide clarity.

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
		framework of multiple Contractors to engage in further competitions (a multiple supplier framework)	(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 or direct award (a multiple supplier framework)	
1.1		HoP means the Head of Procurement.	HoP means the Head of Procurement and Contract Management.	Definition amended to provide clarity.
1.1		Procurement and Contract Management Strategy means the Council's approved Procurement and Contract Management Strategy as agreed from time to time.	Procurement and Contract Management Strategy means the Council's approved Procurement and Contract Management Strategy.	Definition amended to provide clarity.
1.2		These Procurement and Contract Management Rules form part of the overall control framework within which North Yorkshire County Council operates.	These Rules form part of the overall control framework within which the Council operates.	Amended to reflect correct usage of defined terms.
2.9		Wherever appropriate procurement shall be undertaken using the standard precedent documents contained in the Procurement Manual applying to Selection Questionnaires, Invitation to Tenders or Invitation to Bids. Wherever alternative documents are to be used they must be approved by the HoP and, where appropriate, the ACE(LDS).	Wherever appropriate procurement shall be undertaken using the standard documents contained in the Procurement Manual applying to Selection Questionnaires, Invitation to Tenders or Invitation to Bids. Wherever alternative documents are to be used they must be approved by the HoP and, where appropriate, the ACE(LDS).	Amended to provide clarity.
2.11		Where the Council is procuring in partnership with another Authority who are the lead procurer,	Where the Council is procuring in partnership with another contracting authority who are the lead	

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
		subject to agreement from the HoP, the Council will follow the lead procurers Procurement and Contract Procedure Rules or equivalent.	procurer, subject to agreement from the HoP, the Council will follow the lead procurers Procurement and Contract Procedure Rules or equivalent.	
	2.13		Where a proposed procurement includes two or more types of provision (i.e. Goods, Services or Works) the value shall be based on the provision that characterises the main subject of the Contract in question.	Added to provide clarity on determining the total contract value.
2			For the purposes of the Transparency Procedures set out in Tables 1-4, below, the Responsible Officer must also consider the Key Decision criteria set out in Article 13.03(b)(i) of the Constitution when determining whether the procurement comprises a Key Decision.	Added to provide clarity around Officer responsibilities in relation to Key Decisions.
2		<p>Table 1: Goods and Services (excluding Social & Other Specific Services)</p> <p>Table 2: Works</p> <p>Table 3: Social & Other Specific Services</p> <p> Rule 2 Tables 1 - 3 Existing.docx</p>	<p>Table 1: Goods and Services (excluding Social & Other Specific Services)</p> <p>Table 2: Works & Concessions</p> <p>Table 3: Social & Other Specific Services</p> <p> Rule 2 Tables 1 - 3 Proposed.docx</p>	Tables 1-4 within PCPR 2 have been updated to align procurement process to the Access to Information Procedure Rules. The intention of this addition is to provide clarity and promote the responsibilities of Council Officers

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
				in relation to decision making in a procurement context.
5.5		The standard clauses contained in the Procurement Manual relating to the Freedom of Information Act 2000 and the Data Protection Act 2018 shall, wherever possible, be included in all Contracts exceeding £25,000 in value.	The standard clauses contained in the Procurement Manual relating to the Freedom of Information Act 2000 and the Data Protection Act 2018 shall, wherever possible, be included in all Contracts.	Amended to reflect the requirement to include the standard clauses in all contracts.
6.6		Electronic Signatures may only be affixed using the Council's chosen electronic signature system or an approved alternative.	Electronic Signatures may only be affixed using the Council's chosen electronic signature system or an approved alternative, as agreed by the HoP.	Amended to reflect that the HoP must approve the use of any alternative.
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).	Where appropriate, the Council shall consider whether to include provision for the payment of liquidated damages by a Contractor for breach of Contract.	Amended to remove the requirement for Directors, in consultation with the CD-SR, to consider whether to include provision for the payment of liquidated damages by a Contractor for breach of Contract. Operationally the responsibility for

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
				consideration of this requirement will transfer to Legal Services.
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.	Where considered appropriate by the Council, 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.	Amended to remove the requirement for Directors, in consultation with the CD-SR, to consider whether the Contractor will be required to provide a performance bond to secure the performance of the Contract Operationally the responsibility for consideration of this requirement will transfer to Legal Services.
9.4		Before Bids with a value in excess of £25,000 are requested the evaluation criteria must be recorded in writing in the Invitation to Bid evaluation model. The evaluation criteria must be identified and the weighting between price and quality established	Before bids with a value in excess of £25,000 are requested the evaluation criteria must be recorded in writing in the Selection Questionnaire and / Invitation to Bid documents. The evaluation criteria must be identified and the weighting between price and quality	Amended to provide clarity.

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
		and stated in the request for Bids sent to Participants.	established and stated in the request for bids sent to participants.	
	9.10		The evaluation of bids shall be carried out by a panel of suitably qualified Officers who are considered appropriate having regard for the subject matter and value of the Contract.	Added to provide clarity and ensure a robust procedure is undertaken in relation to the evaluation of bids and tenders. This PCPR outlines the responsibility of the commissioning service, specifically around the suitability and appropriateness of panel members to be involved in the evaluation.
11.2		Before an Official Journal of the European Union Tender is requested the evaluation criteria to be applied to the Official Journal of the European Union Tender must be recorded in writing in the Invitation to Tender evaluation model. The evaluation criteria must be identified and the weighting between price and quality established and stated in the Invitation to Tender sent to Participants.	Before an Official Journal of the European Union Tender is requested the evaluation criteria to be applied to the Official Journal of the European Union Tender must be recorded in writing in the Selection Questionnaire and / or Invitation to Tender document. The evaluation criteria must be identified and the weighting between price and quality established and stated in the Selection Questionnaire and/or Invitation to Tender sent to Participants.	Amended to provide clarity.

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
11.3		Irrespective of the procurement process being undertaken an Official Journal of the European Union notice must be published through the E-Sourcing system.	Irrespective of the procurement process being undertaken an Official Journal of the European Union notice must be published, where possible this should be through the E-Sourcing system or an appropriate alternative system as agreed with the HoP.	Amended to confirm requirement for alternatives to be approved by HoP
12.1		<p>12.1 The Gateway Process shall identify which of the following Official Journal of the European Union Tender processes shall be used to invite tenders for Contracts with a value in excess of the relevant EU Threshold:</p> <ul style="list-style-type: none"> (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) 	<p>The Gateway Process shall identify which of the following Official Journal of the European Union Tender Procedures shall be used to invite tenders for Contracts with a value in excess of the relevant EU Threshold:</p> <ul style="list-style-type: none"> (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) use of the Negotiated Procedure without prior publication (as prescribed by Regulation 32) (vii) Social and Other Specific Services (Light Touch Regime) (as prescribed by Regulations 74-76) <p>and such identified process shall be used for the invitation of Official Journal of the European Union</p>	Amended to provide clarity.

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
		<p>(vii) Framework Agreement (as prescribed by Regulation 33)</p> <p>(viii) Dynamic Purchasing System (as prescribed by Regulation 34)</p> <p>(ix) Electronic auctions (as prescribed by Regulation 35)</p> <p>(x) Electronic catalogues (as prescribed by Regulation 36)</p> <p>(xi) Social and Other Specific Services Light Touch Regime (as prescribed by Regulations 74-76)</p> <p>and such identified process shall be used for the invitation of Official Journal of the European Union Tenders in accordance with the requirements of the PCR's.</p>	<p>Tenders in accordance with the requirements of the PCR's.</p>	

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
	12.2		<p>The Gateway Process shall also identify which of the following techniques and instruments which can be used for Electronic and Aggregated Procurements:</p> <ul style="list-style-type: none"> (i) Framework Agreement (as prescribed by Regulation 33) (ii) Dynamic Purchasing System (as prescribed by Regulation 34) (iii) Electronic auctions (as prescribed by Regulation 35) (iv) Electronic catalogues (as prescribed by Regulation 36) 	Amended to provide clarity.
13.3		<p>Official Journal of the European Union 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 Official Journal of the European Union 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 PCRs and Official Journal of the European Union Tenders are returned in hard copy format a written record shall be maintained by the HoP, of the Official Journal of the European Union Tenders received. Such a</p>	<p>Electronically submitted Official Journal of the European Union Tenders must be opened at the same time, in an auditable way, through the E-Sourcing system by an independent Officer from the Procurement and Contract Management Service.</p>	Amended to provide clarity.

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
		record shall include the date and time of Official Journal of the European Union Tender opening, the identity of the Officer(s) present, the identities of Participants and the tendered sums (where readily ascertainable).		
	13.5		Official Journal of the European Union Tenders submitted in 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).	Amended to provide clarity.
14.1		The Responsible Officer shall evaluate Official Journal of the European Union Tenders using the evaluation model published in accordance with Rule 11.2.	The Responsible Officer shall evaluate Official Journal of the European Union Tenders using the evaluation criteria published in accordance with Rule 11.2.	Amended to provide clarity.
14.3		If, as a result of the Official Journal of the European Union 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.	If, as a result of the Official Journal of the European Union 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 through the E-Sourcing System.	Amended to reflect the requirement for the clarification to be recorded in writing through the E-Sourcing system.
15.1		The Local Government (Contracts) Act (LGCA) 1997 clarified the power of local authorities to enter into certain contracts, including Private Finance	The Local Government (Contracts) Act (LGCA) 1997 clarified the power of local authorities to enter into certain contracts, including Private Finance Initiative	Amended to remove the requirement for any contracts which

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON				
		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. Any contract which requires certifying as a LGCA contract, must have the approval from the Council’s Executive.	Contracts. Where Contracts need to be certified under the 1997 Act, only the following Officers are authorised to do so, following consultation with the relevant Executive Member: 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.	require certifying under the 1997 Act to be approved by the Executive. It is proposed that those Officers authorised to certify under the LGCA, do so in consultation with the relevant Executive Member.				
16.1(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.	where 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 it must be applied in accordance with those terms.	Amended to provide clarity.				
17.10(a)		CM shall ensure that:- (a) all relevant Contracts (including those Contracts to which Rule 16 applies) are entered onto the Contract Register	The HoP shall ensure that:- (a) all relevant Contracts (including those Contracts to which Rule 16 applies) are entered onto the Contract Register	Amended to reflect that this responsibility sits with the HoP.				
18.1		<p>Table 5: Gateway Process - Authorisation to Approve</p> <table border="1" data-bbox="488 1321 1088 1385"> <tr> <td data-bbox="488 1321 750 1385">Gateway Process gate</td> <td data-bbox="750 1321 1088 1385">Approval process</td> </tr> </table>	Gateway Process gate	Approval process	<p>Table 5: Gateway Process - Authorisation to Approve</p> <table border="1" data-bbox="1126 1321 1753 1385"> <tr> <td data-bbox="1126 1321 1388 1385">Gateway Process gate</td> <td data-bbox="1388 1321 1753 1385">Approval process</td> </tr> </table>	Gateway Process gate	Approval process	Gate 2 Authorisation amended to include approval by an Officer from the
Gateway Process gate	Approval process							
Gateway Process gate	Approval process							

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING		PROPOSED AMENDMENT		REASON
		Gate 1 – Commissioning and Procurement Options Appraisal	PAB AND The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate</i> AND The ACE(LDS)	Gate 1 – Commissioning and Procurement Options Appraisal	PAB AND The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate</i> AND The ACE(LDS)	Procurement and Contract Management Service.
Gate 2 – Authorisation of Documents	SCM	Gate 2 – Authorisation of Documents	An Officer from the Procurement and Contract Management Service AND SCM			
Gate 3 – Contract Award	PAB AND The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate.</i>	Gate 3 – Contract Award	PAB AND The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate.</i>			
Gate 4(a) – Contract Extension/Variation	PAB AND The relevant Director or delegated Assistant Director	Gate 4(a) – Contract Extension/Variation	PAB AND			

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING		PROPOSED AMENDMENT		REASON
			<p>AND Finance - CD-SR or delegated Assistant Director <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.</i></p>		<p>The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <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.</i></p>	
		<p>Stage 4(b) – Contract Termination (during the contract period)</p>	<p>PAB AND The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate.</i></p>	<p>Stage 4(b) – Contract Termination (during the contract period)</p>	<p>PAB AND The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate.</i></p>	
18.2		<p>18.2 The whole contract financial value thresholds for the purposes of Rule 18.1 are:</p> <p>(a) Works contracts - £1m</p>		<p>18.2 The whole contract financial value thresholds for the purposes of Rule 18.1 are:</p> <p>(a) Works & Concession Contracts - £1,000,000</p>		Amended to provide clarity.

EXISTING RULE NO.	NEW RULE NO.	CURRENT WORDING	PROPOSED AMENDMENT	REASON
		(b) Social and Other Specific Services Contracts - £663,540 (c) Goods and Services contracts - £189,330	(b) Social and Other Specific Services Contracts - £663,540 (b) Goods and Services contracts - £189,330	
21.1		To ensure that persons involved in the procurement process are aware of, and adhere to the principles of impartiality and professional standards when dealing with, and completing commercial undertakings, a Conflict of Interest and Confidentiality Undertaking Declaration form is required. This must be completed by all members of the evaluation panel upon commencement of this project.	To ensure that persons involved in the procurement process are aware of, and adhere to the principles of impartiality and professional standards when dealing with, and completing commercial undertakings, a Conflict of Interest declaration must be completed by all members of the evaluation panel upon commencement of this project. A Confidentiality Agreement or Declaration form must also be completed by any members of the evaluation panel who are not directly employed by the Council, unless there are alternative appropriate confidentiality provisions within the persons appointment documents (such as a consultancy agreement).	To ensure an open, fair and transparent process and mitigating risk of legal challenge.
Various			Miscellaneous corrections.	Ensuring correct use of defined terms.

Procurement and Contract Procedure Rules

CONTENTS

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

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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.

Please note that any reference within these Rules to the Public Contract Regulations 2015 and any requirement arising from them, and the European Union, remain in force in accordance with the Withdrawal Agreement 2019 until the end of the transition period which is currently due to end 31 December 2020. From the 1st January 2021, any subsequent amendments by Government are to supersede the references within these Rules. Further guidance will be issued by the Procurement and Contract Management Service in due course.

1. INTRODUCTION

1.1 These terms will have the following meanings in the Procurement and 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 8.3**

CD-SR means the Corporate Director - Strategic Resources

CM means the Contract Manager who is responsible for the contract management role on behalf of the Council

Concession means as defined in Regulation 3(4) of the Concession Contracts Regulations 2016

Deleted: means the 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 **Chapters 7 & 8** of the Public Contracts Regulations 2015.

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Contract Management Practitioners Group means the Council's practitioner group responsible for improving contract management standards.

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Contract Register means the register of Contracts maintained by the Council as set out in **Rule 17.8**

Contractor means a person or entity with whom the Council has a contract

Council means North Yorkshire County Council

Decision Record means a record of a decision produced in accordance with the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012

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

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Directors Recommendation means a written record of the decision and justification to apply one of the exceptions set out in **Rule 16.1** to be signed by the relevant Director

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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 £189,330 for services and supplies £663,540 for social and other specific services and £4,733,252 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:

- (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 or direct award (a multiple supplier framework)

Gateway Process means the Council's value based gateway commissioning and procurement process that combines assessment and understanding of various aspects of value with appropriate review and scrutiny at defined points in the commissioning and procurement cycle

HoP	means the Head of Procurement <u>and Contract Management</u>
Internal Audit	means the Council's appointed internal auditors (currently Veritau)
ITB	means an Invitation to Bid
ITQ	means an Invitation to Quote
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 and Contract Management	means the Council's approved Procurement and Contract Management Strategy

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Strategy

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 Procurement and Contract Procedure Rules
SCM	means Senior Category Manager
Scheme of Delegation	means a record of all duties and responsibilities as delegated under these Rules which is to be maintained by each Director, the CD-SR and the ACE(LDS)
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 16.4
Works	means as defined in Regulation 2 of the PCRs

1.2 These Rules form part of the overall control framework within which ~~the~~ Council operates. They aim to facilitate sound, innovative service delivery by setting out best practice for the administration of all procurement and contract management matters throughout the Council, ensuring a high quality of procurement and contract management information, robust procurement and contract management and enabling good decision making. They should not be viewed as a barrier to executive action and are constantly kept under review to ensure that they remain relevant to the day to day activities of the Council and contribute to the delivery of value for money.

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1.3 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 9.6, 16.1(d), (g) and (h), 16.3(b)**

- (ii) CD-SR - **Rules 2.1, 2.4, 2.5, 9.6, 16.1(d), (g) and (h), 16.3(b), 16.4, 16.5 and 17.2**
- (iii) ACE(LDS) - **Rules 2.1, 2.4, 9.6, 16.3(b), 16.4 and 18.1**

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 and define the correct procedures to be followed when the Council enters into any contractual arrangement and should be read in conjunction with the Finance Procedure Rules under Article 14.01 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 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.
- 2.4 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.
- 2.5 The CD-SR has also produced a Finance Manual which gives advice on financial procedures.
- 2.6 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.
- 2.7 Directors and the HoP shall ensure that all documentation relating to Contracts and procurement processes is retained in accordance with the Council's Records Retention and Destruction Schedule.
- 2.8 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 they were an Officer of the Council.
- 2.9 Wherever appropriate procurement shall be undertaken using the standard 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 HoP and, where appropriate, the ACE(LDS).

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2.10 All Officers shall adhere to the approved Procurement and Contract Management Strategy of the Council.

2.11 Where the Council is procuring in partnership with another contracting authority who are the lead procurer, subject to agreement from the HoP, the Council will follow the lead procurers Procurement and Contract Procedure Rules or equivalent.

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2.12 Where the total Contract value for procurement is within the values in the first column of **Tables 1-4**, below, the award procedure in the second column must be followed.

2.13 Where a proposed procurement includes two or more types of provision (i.e. Goods, Services or Works) the value shall be based on the provision that characterises the main subject of the Contract in question.

2.14 For the purposes of the Transparency Procedures set out in Tables 1-4, below, the Responsible Officer must also consider the Key Decision criteria set out in Article 13.03(b)(i) of the Constitution when determining whether the procurement comprises a Key Decision.

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

<u>Total Contract Value</u>	<u>Award Procedure</u>	<u>Transparency Procedure</u>	<u>Signature/Sealing Contract</u>
Up to £25,000	Quotes should be invited <u>or the Best Value Form process followed</u> in accordance with Rule 8 . <u>Does</u> not need to be advertised using the E-Sourcing system or Contracts Finder.	<u>The Responsible Officer will notify the Procurement and Contract Management Service of any Contract awarded below £25,000.</u>	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
£25,000 up to EU Threshold (currently £189,330)	Bids must be invited in accordance with Rule 9 . These must be advertised using the E-Sourcing system and published to Contracts Finder.	<u>The Responsible Officer must complete the Decision Record process for Contracts with a value of £50,000 or above.</u> <u>Contracts must be published on the Contracts Register.</u>	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
Above EU Threshold (currently £189,330)	Follow the appropriate EU Procedure as set out in Rules 11 and 12 . Approval must be sought through the Gateway Process.	<u>The Responsible Officer must complete the Decision Record process.</u> <u>The Responsible Officer must complete the Key Decision process for Contracts with a value of £500,000 or above.</u> <u>Contracts must be published on the Contracts Register.</u>	Two signatures: The Director (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation). AND The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation). Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6 .

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If Quotes are not obtained, the Best Value Form must be completed.

Table 2: Works & Concessions

Total Contract Value	Award Procedure	<u>Transparency Procedure</u>	Signature/Sealing Contract
Up to £25,000	Quotes should be invited <u>or the Best Value Form process followed</u> in accordance with Rule 8 . <u>Does</u> not need to be advertised using the E-Sourcing system or Contracts Finder.	<u>The Responsible Officer will notify the Procurement and Contract Management Service of any Contract awarded below £25,000.</u>	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
£25,001 up to <u><£1,000,000</u>	Bids must be invited in accordance with Rule 9 . These must be advertised using the E-Sourcing system and published to Contracts Finder.	<u>The Responsible Officer must complete the Decision Record process for Contracts with a value of £50,000 or above.</u> <u>The Responsible Officer must complete the Key Decision process for Contracts with a value of £500,000 or above.</u> <u>Contracts must be published on the Contracts Register.</u>	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
<u>£1,000,000 up to EU Threshold (currently £4,733,252 for Works)</u>	Bids must be invited in accordance with Rule 9 . These must be advertised using the E-Sourcing system and published to Contracts Finder. <u>For Contracts with a value of £1,000,000 or greater approval must be sought through the Gateway Process.</u>	<u>The Responsible Officer must complete the Key Decision process.</u> <u>Contracts must be published on the Contracts Register.</u>	<u>Contracts with a value in excess of £1,000,000 must be sealed by ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6.</u>

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If Quotes are not obtained, the Best Value Form must be completed.

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For Contracts with a value of £1m+, approval must be sought through the Gateway Process.

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Total Contract Value	Award Procedure	<u>Transparency Procedure</u>	Signature/Sealing Contract
Above EU Threshold (currently £4,733,252 for Works)	Follow the appropriate EU Procedure as set out in Rules 11 and 12 . Approval must be sought through the Gateway Process.	<u>The Responsible Officer must complete the Key Decision process.</u> <u>Contracts must be published on the Contracts Register.</u>	Contracts must be sealed by ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6 .

Table 3: Social & Other Specific Services

Total Contract Value	Award Procedure	<u>Transparency Procedure</u>	Signature/Sealing Contract
Up to £25,000	Quotes should be invited <u>or the Best Value Form process followed</u> in accordance with Rule 8 . <u>Does</u> not need to be advertised using the E-Sourcing system or Contracts Finder.	<u>The Responsible Officer will notify the Procurement and Contract Management Service of any Contract awarded below £25,000.</u>	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
£25,001 up to EU Threshold (currently £663,540)	Bids must be invited in accordance with Rule 9 . These must be advertised using the E-Sourcing system and published to Contracts Finder.	<u>The Responsible Officer must complete the Decision Record process for Contracts with a value of £50,000 or above.</u> <u>The Responsible Officer must complete the Key Decision process for Contracts with a value of £500,000 or above.</u> <u>Contracts must be published on the Contracts Register.</u>	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
Above EU Threshold (currently £663,540)	Follow the appropriate EU Procedure as set out in Rules 11 and 12 . Approval must be sought through the Gateway Process.	<u>The Responsible Officer must complete the Key Decision process.</u> <u>Contracts must be published on the Contracts Register.</u>	Two signatures The Director (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation). AND The ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation). Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) in accordance with Rule 6 .

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Table 4: Grants

Total Contract Value	Award Procedure	Signature/Sealing Contracts
Up to £175,000 over three years	A competitive application process should be completed in accordance with Rule 22 . Competitive applications do not need to be advertised using the E-Sourcing system or Contracts Finder. If competitive applications are not obtained the Best Value Form must be completed.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
Above £175,000 - relevant EU threshold	A competitive application process should be completed in accordance with Rule 22 . This should be advertised using the E-Sourcing system. The use of Contracts Finder is not mandatory.	One signature The Director within the relevant Directorate (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation).
Above EU Threshold	Where the grant value meets the relevant EU Threshold the Gateway Process must be completed. A competitive process must be completed. The opportunity must be advertised using the E-Sourcing system. The use of Contracts Finder is not mandatory.	Two signatures. The Director (or by an Officer authorised by the Director to sign on the Directors behalf, as defined in the Scheme of Delegation). AND The ACE(LDS) (or by an Officer authorised by the ACE(LDS) to sign on his behalf, as defined in the Scheme of Delegation). Sealing (where appropriate) ACE(LDS) (or by an Officer authorised by the ACE (LDS) to sign on his behalf, as defined in the Scheme of Delegation) 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). A signed Contract must be in place on or before the service commencement date, unless otherwise agreed by the HoP or ACE(LDS).
- 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 2018 shall, wherever possible, be included in all Contracts.

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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. The ACE(LDS) (or an Officer authorised by the ACE(LDS)) will determine whether a Contract must be signed or sealed.

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 2.12, Tables 1-4** and **Rule 1.3(e)** 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, as agreed by the HoP.

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, the Council shall consider whether to include provision for the payment of liquidated damages by a Contractor for breach of Contract. ▼

7.2 Where considered appropriate by the Council, 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. QUOTES

8.1 Where the estimated value of a Contract is £25,000 or less (taking into account the whole life cost of the Contract, including extensions and/or variations and excluding VAT) a minimum of three quotes should be sought. There is no requirement to use the E-Sourcing system or publish the opportunity on Contracts Finder.

8.2 It is the Officer's responsibility to keep a record of quotes sought for audit purposes and to demonstrate best value has been achieved.

8.3 If three quotes are not sought, the Contract may be directly awarded using the Best Value Form. It is the Officer's responsibility to complete the Best Value Form. **9. BIDS**

9.1 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 2.12, 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

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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.

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9.2 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 9.1** 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.

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9.3 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.

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9.4 Before bids with a value in excess of £25,000 are requested the evaluation criteria must be recorded in writing in the SQ and/ITB documents. The evaluation criteria must be identified and the weighting between price and quality established and stated in the request for bids sent to participants.

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9.5 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.

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9.6 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 11 and 12**.

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9.7 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.

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9.8 Bids may be altered only in accordance with **Rule 10**.

9.9 Where a Contract is terminated within the first 6 months of the Contract commencement date, the Council may award the Contract to the second placed supplier, provided that this demonstrates Best Value and with agreement from the HoP in consultation with the appropriate SCM.

9.10 The evaluation of bids shall be carried out by a panel of suitably qualified Officers who are considered appropriate having regard for the subject matter and value of the Contract.

10. POST BID NEGOTIATION AND CLARIFICATION

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10.1 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 11 and 12**.

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10.2 Post bid negotiations with selected Participants shall only be carried out where:-

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- (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.

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10.3 **Rules 10.1 and 10.2** 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 10.2(c) and 10.2(d)** shall apply, except that the word "clarification" shall be substituted for the word "negotiation" in these Rules.

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11. OJEU TENDERS

11.1 Tenders for Contracts which exceed the EU Threshold shall be invited and awarded in accordance with the PCRs and as prescribed in **Rule 11 and 12**.

General Requirements

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

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11.3 Irrespective of the procurement process being undertaken an OJEU notice must be published, where possible this should be through the E-Sourcing system or an appropriate alternative system as agreed with the HoP.

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

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11.5 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.

11.6 The evaluation of the OJEU Tender submissions shall be carried out by Officers who are considered appropriate having regard for the subject matter and value of the Contract.

11.7 All Tenders undertaken in accordance with **Rule 11** 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.

11.8 All evaluation panel members must have completed the evaluation training prior to completing any evaluation process.

11.9 Where a Contract is terminated within the first 6 months of the Contract commencement date, the Council may award the contract to the second placed supplier with agreement from the HoP in consultation with the ACE(LDS) provided that this demonstrated Best Value and none of the original award criteria has changed.

12. OPTIONS FOR OJEU TENDER

12.1 The Gateway Process shall identify which of the following OJEU Tender Procedures shall be used to invite tenders for Contracts with a value in excess of the relevant EU Threshold:

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- (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) use of the Negotiated Procedure without prior publication (as prescribed by Regulation 32)

(vii) Social and Other Specific Services (Light Touch Regime) (as prescribed by Regulations 74-76)

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

12.2 The Gateway Process shall also identify which of the following techniques and instruments which can be used for Electronic and Aggregated Procurements:

- (i) Framework Agreement (as prescribed by Regulation 33)
- (ii) Dynamic Purchasing System (as prescribed by Regulation 34)
- (iii) Electronic auctions (as prescribed by Regulation 35)
- (iv) Electronic catalogues (as prescribed by Regulation 36)

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13. RECEIPT AND OPENING OF OJEU TENDERS

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13.1 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 13.4**) it has been received by the OJEU Tender closing date and time.

13.2 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.

13.3 Electronically submitted OJEU Tenders, must be opened at the same time, in an auditable way, through the E-Sourcing system by an independent Officer from the Procurement and Contract Management Service.

13.4 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 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).

13.5 OJEU Tenders submitted in 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).

13.6 If an OJEU Tender is received after the specified closing date and time it may not be considered unless the HoP 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.

14. OJEU TENDER EVALUATION AND ACCEPTANCE

14.1 The Responsible Officer shall evaluate OJEU Tenders using the evaluation criteria published in accordance with **Rule 11.2**.

14.2 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).

14.3 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 through the E-Sourcing System.

14.4 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

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to be relevant. This shall be recorded in accordance with the Gateway Process (Gate 3) where appropriate.

- 14.5 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 (or an Officer authorised by 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.
- 14.6 The HoP (or an Officer authorised by 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.
- 14.7 The HoP (or an Officer authorised by 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.

15. CERTIFICATION OF CONTRACTS

- 15.1 The Local Government (Contracts) Act (LGCA) 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, following consultation with the relevant Executive Member: 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.

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16. EXCEPTIONS TO PROCUREMENT AND CONTRACT PROCEDURE RULES

- 16.1 A Director does not need to invite bids in accordance with **Rule 9** 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 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 it must be applied in accordance with those terms; 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

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- (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.

16.2 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.

16.3 A Director does not need to invite OJEU Tenders in accordance with **Rule 11 and 12**, 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

16.4 Specific exceptions to **Rule 9** are permitted in such other circumstances as the CD-SR and the ACE(LDS) may agree.

16.5 Requests for waivers shall be made using the Waiver Request Form prescribed by the CD-SR which shall specify the reasons for the request.

16.6 Any requests for waivers shall be made in consultation with the relevant SCM's, and be signed, dated and kept. The Procurement and Contract Management Service shall maintain a register of all waivers made under this Rule.

17. COMPLIANCE, CONTRACT REGISTER AND FORWARD PROCUREMENT PLANS

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

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

17.3 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.

17.4 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**.

17.5 SCMs are responsible for the production of a spend category FPP which will be completed in such format as the HoP shall require.

17.6 The SCMs shall each present an updated category FPP to the relevant directorate management teams every 6 months for approval.

17.7 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.

17.8 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.

17.9 All Responsible Officers will notify the Procurement and Contract Management Service of any Contract awarded below £25,000. The Responsible Officer will use the format prescribed by the Procurement and Contract Management Service and report this information quarterly.

17.10 The HoP shall ensure that:-

- (a) all relevant Contracts (including those Contracts to which **Rule 16** 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

17.11 When a Procurement leading to 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. This does not apply to Grants as detailed in **Rule 2.12 Table 4**.

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18. GATEWAY PROCESS REPORTS INCLUDING NOTIFICATION OF SECTION 151 OFFICER AND MONITORING OFFICER

18.1 When a procurement is being considered which is expected to exceed the financial value thresholds specified in **Rule 18.2** the Gateway Process must be completed and signed off by the relevant Officers, as detailed in **Table 5** below.

Table 5: Gateway Process - Authorisation to Approve

Gateway Process gate	Approval process
Gate 1 – Commissioning and Procurement Options Appraisal	PAB AND The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate</i> AND The ACE(LDS)
Gate 2 – Authorisation of Documents	<u>An Officer from the Procurement and Contract Management Service</u> AND SCM
Gate 3 – Contract Award	PAB AND The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate.</i>
Gate 4(a) – Contract Extension/Variation	PAB AND The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <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.</i>
Stage 4(b) – Contract Termination (during the contract period)	PAB AND The relevant Director or delegated Assistant Director AND Finance - CD-SR or delegated Assistant Director <i>Procurement Assurance Board to decide as appropriate.</i>

18.2 The whole contract financial value thresholds for the purposes of **Rule 18.1** are:

(a) Works & Concession Contracts - £1,000,000

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(b) Social and Other Specific Services Contracts - £663,540

(c) Goods and Services contracts - £189,330

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18.3 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 18.1**.

19. CONTRACT MANAGEMENT

19.1 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 (Gate 4). Such records shall also be used on the basis for any permitted extension to the Contract.

19.2 Where appropriate the Responsible Officer involved in contract management shall have received a level of formal training commensurate with the nature of the contract.

19.3 Where appropriate the Responsible Officer will attend the Contract Management Practitioners Group.

Contract Variation

19.4 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.

19.5 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 18.1**, (Table 5 - Gateway Process - Authorisation to Approve Gate 4a).

Contract Termination

19.6 If an Officer requires a Contract which exceeds the financial values stated in **Rule 18.2** to be terminated then this must be done in accordance with the terms of the Contract or as outlined in Regulation 72 of the PCRs. Approval must be sought in accordance with **Rule 18.1** (Table 5 - Gateway Process - Authorisation to Approve Gate 4b).

20. TRAINING FOR PROCUREMENT

20.1 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.

21. DECLARATION OF INTERESTS

21.1 To ensure that persons involved in the procurement process are aware of, and adhere to the principles of impartiality and professional standards when dealing with, and completing commercial undertakings, a Conflict of Interest declaration must be completed by all

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members of the evaluation panel upon commencement of this project. A Confidentiality Agreement or Declaration form must also be completed by any members of the evaluation panel who are not directly employed by the Council, unless there are alternative appropriate confidentiality provisions within the persons appointment documents (such as a consultancy agreement).

21.2 If it comes to the knowledge of a Member, Responsible Officer or other Officer that a Contract in which they have 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, they shall immediately give written notice to the ACE(LDS).

22. GRANTS

22.1 The Council cannot procure services which it is itself required to deliver by means of a grant. The Council may grant-fund third party organisations to help deliver community cohesion or to provide complementary activities.

22.2 Taking into account 21.1 above Directors and the HoP 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.

22.3 Where the value of a grant is less than £175,000 over 3 years, 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.

22.4 Where the value of the grant exceeds £175,000 over 3 years but is less than the relevant EU Threshold detailed in **Rule 2.12 Table 4** a competitive grants process must be completed. The opportunity must be advertised on the Council's E-Sourcing system.

22.5 Where the value of a grant exceeds the relevant EU Thresholds, the Director shall complete the Gateway Process in accordance with **Rule 18**. A competitive process must be completed and the opportunity must be advertised on the council E-Sourcing system.

22.6 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.

23. HIRING AND ENGAGING STAFF

23.1 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).

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Appendix B to Item 7

North Yorkshire County Council

EXECUTIVE

13 October 2020

Proposed Changes to the Constitution for recommendation to County Council

Report of the Assistant Chief Executive (Legal and Democratic Services)

1.0 PURPOSE OF REPORT

- 1.1 To present to Members, for their consideration for recommendation to full Council for approval, proposed changes to the Constitution.

2.0 BACKGROUND

- 2.1 The Constitution is maintained by the Monitoring Officer and kept under review on an ongoing basis. This report sets out amendments required to the Constitution to keep it up to date.

3.0 AMENDMENTS TO THE CONSTITUTION

- 3.1 Proposed changes to the Constitution are set out at Appendix 1. All relate to the terms of reference of the Audit Committee.

4.0 AUDIT COMMITTEE TERMS OF REFERENCE

- 4.1 In accordance with recognised best practice, Audit Committee reviews its terms of reference on a regular basis to seek to identify changes which may be required as a result of:- recent legislation; developments in recommended best practice; changes in the Council's governance arrangements; and Members' views on whether the current terms of reference enable the Committee to continue to discharge its responsibilities effectively.
- 4.2 Audit Committee, on 10 October 2018, was advised that the Chartered Institute of Public Finance and Accountancy (CIPFA) had published updated guidance on the operation of audit committees in local government and therefore some limited changes were considered appropriate to the Committee's terms of reference. The Committee agreed that the proposed changes should be made. However, due to an administrative oversight, the proposed changes were not submitted to full Council for approval at that time. To rectify the situation, the Executive is today asked to consider the proposed changes and to recommend them for approval by full Council.

- 4.3 The proposed changes are set out at Appendix 1.

- 4.4 The proposed changes are minor in nature and are considered to be not controversial.

5.0 FINANCIAL IMPLICATIONS

- 5.1 There are no specific financial implications arising from this report.

6.0 LEGAL IMPLICATIONS

- 6.1 There are no legal implications arising from this report.

7.0 **CONSULTATION**

- 7.1 Audit Committee has been consulted on the proposed changes, as described above.
- 7.2 Members of the Constitution Working Party have been consulted about the proposed changes by email of 2 October 2020. It is suggested that, if a Member of the Constitution Working Party has any objection to the proposed changes, the proposals should be submitted to a meeting of the Constitution Working Party before going to full Council.

8.0 **REASONS FOR RECOMMENDATIONS**

- 8.1 The proposed changes are recommended to reflect CIPFA guidance.

10.0 RECOMMENDATIONS

- 10.1 That, subject to any comments the Executive may have, and subject also to no objections being received from Members of the Constitution Working Party, the proposed changes to the Constitution, as set out in Appendix 1, be recommended to full Council for approval.**

BARRY KHAN
Assistant Chief Executive (Legal and Democratic Services)

County Hall
NORTHALLERTON

2 October 2020

Background Documents: The Council's Constitution

Appendices: Appendix 1

AUDIT COMMITTEE

TERMS OF REFERENCE

1. In respect of **Internal Audit**
 - ♦ to approve the Internal Audit Charter, Annual Audit Plan and performance criteria for the Internal Audit Service.
 - ♦ to review summary findings and the main issues arising from internal audit reports and seek assurance that management action has been taken where necessary.
 - ♦ to review the effectiveness of the anti-fraud and corruption arrangements throughout the County Council.
 - ♦ consider the annual report from the Head of Internal Audit.
 - ♦ to obtain assurance that the work of internal audit conforms to the Public Sector Internal Audit Standards.
2. In respect of External Audit
 - to ensure the independence of External Audit is maintained.
 - to review the annual audit plan and monitor its delivery.
3. To review, and recommend to the Executive, changes to Contract, Finance and Property Procedure Rules.
4. In respect of **financial statements**

For both the County Council and the North Yorkshire Pension Fund

 - ♦ to approve the respective annual Statements of Final Accounts.
 - ♦ to receive and review the Annual Audit Letters and associated documents issued by the External Auditor.
 - ♦ to review changes in accounting policy.
5. In respect of **Corporate Governance**
 - ♦ to assess the effectiveness of the County Council's Corporate Governance arrangements.
 - ♦ to review progress on the implementation of Corporate Governance arrangements throughout the County Council.
 - ♦ to approve Annual Governance Statements for both the County Council and the North Yorkshire Pension Fund.
 - ♦ to liaise, as necessary, with the Standards Committee on any matter(s) relating to the Codes of Conduct for both Members and Officers.
 - ♦ to work with the Standards Committee to promote good ethical standards within the County Council.
 - ♦ to review the arrangements in place for ensuring good governance in the County Council's key partnerships and owned companies.
6. In respect of **Risk Management**
 - ♦ to assess the effectiveness of the County Council's Risk Management arrangements.
 - ♦ to review progress on the implementation of Risk Management throughout the County Council.

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7. In respect of **Information Governance**
 - ♦ to review all corporate policies and procedures in relation to Information Governance.
 - ♦ to oversee the implementation of Information Governance policies and procedures throughout the County Council.
8. In respect of **Treasury Management**
 - ♦ to be responsible for ensuring effective scrutiny of the County Council's Treasury Management strategy and policies as required by the CIPFA Treasury Management Code of Practice.
 - ♦ to review these Treasury Management strategies, policies and arrangements and make appropriate recommendations to the Executive.
9. In respect of **Value for Money**
 - ♦ to have oversight of the arrangements across the County Council in securing Value for Money.
10. To consider any other relevant matter referred to it by the County Council, Executive or any other Committee. In addition any matter of concern can be raised by this Committee to the full County Council, Executive or any other Member body.
11. To exercise all functions in relation to the making and changing of policy relating to such audit and counter-fraud matters which fall within the remit of the Committee (save as may be delegated otherwise).
12. To periodically review the effectiveness of the Audit Committee itself.
13. To meet not less than four times a year on normal business and review its Terms of Reference on an annual basis.