

Procurement and Contract Procedure Rules

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

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:-

Above Threshold Tender means the procurement process to be followed where the estimated whole life value of a Contract exceeds the relevant UK Procurement Threshold

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

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

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

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; Assistant Chief Executive (Business Support) , Assistant Chief Executive (Legal Services) , Corporate Director Business and Environmental Services; Corporate Director Health and Adult Services; Corporate Director Children and Young People's Service; Corporate Director - Strategic Resources as the context requires
Directors Recommendation	means a written record of the decision and justification to apply one of the exceptions set out in Rule 16.1 to be signed by the relevant Director
DMT	means the Directorate Management Team
Electronic Signatures	means an advanced electronic signature which is: <ul style="list-style-type: none"> (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

~~**Grant** means a sum of money awarded to the Council in anticipation of it being applied for an agreed purpose~~

HoP means the Head of Procurement and Contract Management

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 Strategy	means the Council's approved Procurement and Contract Management 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
<u>UK Procurement Threshold</u>	<u>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</u>
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.

1.3 References in these Rules to:-

- (a) any legislation (e.g. Act, Statutory Instrument, [EU-UK 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).
- 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.
- 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)

Total Contract Value	Award Procedure	Transparency Procedure	Signature/Sealing Contract
Up to £25,000	<p>Quotes should be invited or the Best Value Form process followed in accordance with Rule 8.</p> <p>Does not need to be advertised using the E-Sourcing system or Contracts Finder.</p>	<p>The Responsible Officer will notify the Procurement and Contract Management Service of any Contract awarded below £25,000.</p>	<p>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).</p>
<p>£25,000 up to UK Procurement Threshold EU Threshold (currently £189,330)</p>	<p>Bids must be invited in accordance with Rule 9.</p> <p>These must be advertised using the E-Sourcing system and published to Contracts Finder.</p>	<p>The Responsible Officer must complete the Decision Record process for Contracts with a value of £50,000 or above.</p> <p>Contracts must be published on the Contracts Register.</p>	<p>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).</p>
<p>Above UK Procurement Threshold EU Threshold (currently £189,330)</p>	<p>Follow the appropriate EU Procedure procedure as set out in Rules 11 and 12. Approval must be sought through the Gateway Process.</p>	<p>The Responsible Officer must complete the Decision Record process.</p> <p>The Responsible Officer must complete the Key Decision process for Contracts with a value of £500,000 or above.</p> <p>Contracts must be published on the Contracts Register.</p>	<p>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).</p> <p>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.</p>

Table 2: Works & Concessions

Total Contract Value	Award Procedure	Transparency Procedure	Signature/Sealing Contract
Up to £25,000	Quotes should be invited or the Best Value Form process followed in accordance with Rule 8 . Does not need to be advertised using the E-Sourcing system or Contracts Finder.	The Responsible Officer will notify the Procurement and Contract Management Service of any Contract awarded below £25,000.	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 <£1,000,000	Bids must be invited in accordance with Rule 9 . These must be advertised using the E-Sourcing system and published to Contracts Finder.	The Responsible Officer must complete the Decision Record process for Contracts with a value of £50,000 or above. The Responsible Officer must complete the Key Decision process for Contracts with a value of £500,000 or above. Contracts must be published on the Contracts Register.	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).
£1,000,000 up to UK Procurement Threshold EU Threshold (currently £4,733,252 for Works)	Bids must be invited in accordance with Rule 9 . These must be advertised using the E-Sourcing system and published to Contracts Finder. For Contracts with a value of £1,000,000 or greater approval must be sought through the Gateway Process.	The Responsible Officer must complete the Key Decision process. Contracts must be published on the Contracts Register.	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 .

Total Contract Value	Award Procedure	Transparency Procedure	Signature/Sealing Contract
Above UK Procurement Threshold EU Threshold (currently £4,733,252 for Works)	Follow the appropriate EU Procedure procedure as set out in Rules 11 and 12 . Approval must be sought through the Gateway Process.	The Responsible Officer must complete the Key Decision process. Contracts must be published on the Contracts Register.	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

Contract Value	Award Procedure	Transparency Procedure	Signature/Sealing Contract
Up to £25,000	Quotes should be invited or the Best Value Form process followed in accordance with Rule 8 . Does not need to be advertised using the E-Sourcing system or Contracts Finder.	The Responsible Officer will notify the Procurement and Contract Management Service of any Contract awarded below £25,000.	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 UK Procurement Threshold 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.	The Responsible Officer must complete the Decision Record process for Contracts with a value of £50,000 or above. The Responsible Officer must complete the Key Decision process for Contracts with a value of £500,000 or above. Contracts must be published on the	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).

		Contracts Register.	
Above UK Procurement Threshold EU Threshold (currently £663,540)	Follow the appropriate EU Procedure procedure as set out in Rules 11 and 12 . Approval must be sought through the Gateway Process.	The Responsible Officer must complete the Key Decision process. Contracts must be published on the Contracts Register.	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 .

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 <u>UK Procurement Threshold</u> 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 <u>UK Procurement</u> EU Threshold	Where the grant value meets the relevant EU <u>UK Procurement</u> 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-UK 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-UK](#) 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.

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 [UK Procurement Threshold](#)~~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 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.

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.

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.

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.

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.

9.6 A bid cannot be accepted where the value exceeds the relevant [UK Procurement Threshold](#)~~EU Threshold~~. If the value of the bid exceeds the relevant [UK Procurement Threshold](#) ~~EU Threshold~~ a Director must seek tenders in accordance with **Rules 11 and 12**.

- 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.
- 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

- 10.1 Post bid negotiations may not be undertaken where the value of the Contract exceeds the relevant [UK Procurement Threshold](#) ~~EU Threshold~~. If the value of the bid exceeds the relevant [UK Procurement Threshold](#) ~~EU Threshold~~, the Director must invite tenders in accordance with **Rules 11 and 12**.
- 10.2 Post bid negotiations with selected Participants shall only be carried out where:-
- (a) post tender negotiations are permitted by law; and
 - (b) the Director in consultation with the HoP considers that added value may be obtained; and
 - (c) post bid negotiations are conducted by a team of suitably experienced Officers approved by the Director and who have been trained in post bid negotiations; and
 - (d) a comprehensive, written record of the post bid negotiations is kept by the Director; and
 - (e) a clear record of the added value to be obtained as a result of the post bid negotiations is incorporated into the Contract with the successful Participant.
- 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.

11. ~~OJEU~~ ABOVE THRESHOLD TENDERS

- 11.1 Tenders for Contracts which exceed the [EU-UK Procurement Threshold](#) ~~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~~ Above Threshold Tender is requested the evaluation criteria to be applied to the Above Threshold~~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.
- 11.3 Irrespective of the procurement process being undertaken ~~an a OJEU~~ notice must be published on the Find A Tender Service system, where possible this should be through the E-Sourcing system or an appropriate alternative system as agreed with the HoP.
- 11.4 All Participants invited to submit Above Threshold~~OJEU~~ Tenders shall be provided in all instances with identical instructions and information.
- 11.5 Where considered appropriate, the HoP may, in consultation with the SCM, permit Participants to submit variant Above Threshold~~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 Above Threshold~~OJEU~~ Tenders shall be given to all Participants. Variant Above Threshold~~OJEU~~ Tenders shall only be considered if the Participant also submits a compliant primary tender.
- 11.6 The evaluation of the Above Threshold~~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~~ ABOVE THRESHOLD TENDERS**

- 12.1 The Gateway Process shall identify which of the following ~~OJEU~~ Above Threshold Tender Procedures shall be used to invite tenders for Contracts with a value in excess of the relevant UK Procurement Threshold~~EU Threshold~~:
- (i) the Open Procedure (as prescribed by Regulation 27)
 - (ii) the Restricted Procedure (as prescribed by Regulation 28)

- (iii) the Competitive Procedure with Negotiation (as prescribed by Regulation 29)
- (iv) the Competitive Dialogue Procedure (as prescribed by Regulation 30)
- (v) the Innovation Partnership Procurement (as prescribed by Regulation 31)
- (vi) 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)

and such identified process shall be used for the invitation of [Above Threshold 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)

13. RECEIPT AND OPENING OF ~~OJEU~~ ABOVE THRESHOLD TENDERS

13.1 A written Above Threshold~~OJEU~~ Tender may only be considered if:-

~~(a)~~ (a)—it has been received electronically through the E-Sourcing System, ~~;~~ or (where permitted in exceptional circumstances, and subject to agreement by the HoP) it has been received electronically through an appropriate alternative method, such as a secure email inbox; or

~~(a)(b)~~ (b)—(where permitted under Regulation 84(h)) it has been received in hard copy in a sealed envelope marked “Above Threshold~~OJEU~~ Tender” and indicating the subject matter of the Above Threshold~~OJEU~~ Tender, and the identity of the Participant cannot be ascertained from the tender envelope; and

~~(c)~~ (c)—(subject to **Rule 13.4**) it has been received by the Above Threshold~~OJEU~~ Tender closing date and time.

~~(b)~~—

13.2 The CD-SR (or a person designated by him) shall be responsible for the reception and safe custody of Above Threshold ~~OJEU~~ Tenders until they are opened.

13.3 Electronically submitted Above Threshold~~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 Above Threshold ~~OJEU~~ Tenders are returned in hard copy format a written record shall be maintained by the HoP, of the ~~OJEU~~ Above Threshold Tenders received. Such a record shall include the date and time of Above Threshold~~OJEU~~ Tender opening, the identity of the Officer(s) present, the identities of Participants and the tendered sums (where readily ascertainable).

13.5 Above Threshold~~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 Above Threshold ~~OJEU~~ Tender is received after the specified closing date and time it may not be considered unless the HoP is satisfied that the Above Threshold~~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. ABOVE THRESHOLD~~OJEU~~ TENDER EVALUATION AND ACCEPTANCE

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

14.2 Only in circumstances where an Above Threshold~~OJEU~~ Tender is agreed by the CD-SR to be an abnormally low tender in accordance with the PCR's can an Above Threshold~~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 [Above Threshold 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 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 [Above Threshold 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 [Above Threshold 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.

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
- (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 Above Threshold ~~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.

[16.7 Specific exceptions to **Rule 22.4** are permitted in such other circumstances as the CD-SR and the ACE\(LDS\) may agree.](#)

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**.

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

- (a) Works & Concession Contracts - £1,000,000
- (b) Social and Other Specific Services Contracts - £663,540
- (c) Goods and Services contracts - £189,330

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 [UK Procurement Threshold](#) ~~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 [UK Procurement Threshold](#) ~~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).

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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 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 [24.22.1](#) 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-UK](#) 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 [UK Procurement Threshold](#) ~~EU Threshold~~ detailed in **Rule 2.12 Table 4** a competitive grants process ~~must-should~~ be completed. The opportunity ~~must-should~~ be advertised on the Council's E-Sourcing system.

- 22.5 Where the value of a grant exceeds the relevant [UK Procurement Threshold](#)~~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).