

**CONTRACT PROCEDURE
RULES**



**Eastern Shires Purchasing Organisation
(ESPO)**

Contract Procedure Rules

From 1 October 2021

ESPO Contract Procedure Rules

ESPO is the trading name of a joint committee of local authorities, the county councils of Leicestershire, Lincolnshire, Cambridgeshire, Norfolk, Warwickshire, and the city council of Peterborough (the "member authorities") established under the Local Government Act 1972 (section 101 (5) and section 102) and section 9EB of the Local Government Act 2000. Through Leicestershire County Council and in accordance with an agreement between the member authorities (the "Consortium Agreement") the joint committee procures services and goods which it supplies to member authorities and other contracting authorities, as defined in the Public Contracts Regulations 2015, using powers to trade under the Local Authorities (Goods & Services) Act 1970 and powers to make a charge to recover its costs under section 3 of the Localism Act 2011 and section 93 of the Local Government Act 2000.

Separately, a private company, ESPO Trading Limited, has been granted a licence to use the trading name "ESPO". However, ESPO Trading Limited will not be operated under the Consortium Agreement, but in accordance with its own constitution. It will be a separate legal person, distinct from the joint committee and its member authorities.

These Contract Procedure Rules apply in the circumstances described in Rule 4; however, they do not apply to ESPO Trading Limited, its procurement or other activities.

GENERAL

RULE 1

Compliance

- (a) Officers must comply with these Rules. Failure to do so may result in disciplinary action.
- (b) If a decision does not fall within Appendix 4 to Schedule 1: Functions of, and Delegations to the Director of ESPO, the decision can be escalated to the Director of ESPO, the decision can be escalated to the Chief Officers Group or Management Committee
- (c) Sale of council assets are not part of these rules. They are covered by Rule 25 Purchasing and income collections and Rule 26 Inventories and assets of the Financial Procedure Rules (Part 4F), Leicestershire County Council's Constitution.

RULE 2

Delegation

The Director of ESPO may delegate his responsibilities under these Rules in accordance with Rule 6 of Section D (General scheme of delegation to heads of departments) of Part 3 (Responsibility for Functions) of the Servicing Authority's Constitution.

RULE 3

Interpretation

Words and expressions used in these Rules are to be interpreted in accordance with the provisions of Schedule 1.

RULE 4

Application

These Rules apply to the procurement of every Contract made by Leicestershire County Council, trading as ESPO ("ESPO") on behalf of the management committee or Director of ESPO, and every Contract procured on behalf of and made by an ESPO Client EXCEPT Contracts:

- (i) for only the acquisition or disposal of any interest in land;
- (ii) for the lending or borrowing of money;
- (iii) of employment (making an individual a direct employee of ESPO); or
- (iv) procured on behalf of and made by an ESPO Client that has agreed that the procurement of the Contract shall be conducted in accordance with its own contract procedure rules.
- (v) for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament

PROCUREMENT PRINCIPLES

RULE 5

General Requirements

- (a) Every Contract or official order for works, supplies or services made by ESPO shall be in accordance with ESPO's Business Strategy and duty of Best Value.
- (b) When proposing to procure or making arrangements for procuring a service contract where the Estimated Value is equal to or greater than the EU Threshold then consideration must be given as to how the Contract might improve the economic, social and environmental wellbeing of the relevant area as required by the Public Services (Social value) Act 2012.
- (c) Where the services are Light-Touch Services the threshold for Contracts for public supply or services Contracts applies for the purposes of the Social Value Act, being the sum specified in Regulation 5 (1) (d) of the Public Contracts Regulations 2015.
- (d) Procedures set out in the relevant EU Directives, EU Treaties, Acts of Parliament and UK legislation (including for the avoidance of doubt the Public Contracts Regulations 2015, the Concession Contracts Regulations 2016, and where applicable the Public Contracts Regulations 2006) must be complied with at all times.

- (e) Based on criteria laid down by the Director of Corporate Resources, the Director of ESPO will be responsible for evaluating the financial status of Tenderers and suppliers.
- (f) The Procuring Officer/ESPO Client must ensure that sufficient budget provision has been agreed with the budget holder prior to any Procurement Exercise being undertaken.
- (g) Procurement Exercises should usually be undertaken by electronic means provided that:
 - (i) the requirements of these Rules are followed with only such modifications as may be necessary to allow for procurement by such means; and
 - (ii) any electronic tendering system has been approved by the Director of ESPO.
- (h) Subject to the provisions of Rule 28 (b) Contracts shall not be longer than 5 years (including extensions) in duration or of indeterminate length without the prior written approval of the Director of ESPO on advice of the appropriate Procurement Service Manager. Any such approval shall be sought prior to the commencement of the Procurement Exercise.

RULE 6

Exceptions

- (a) Subject to the requirements of EU Directives, EU Treaties, Acts of Parliament, the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016, the following Contracts may be placed by direct negotiation with one or more suppliers, Contracts:-
 - (i) for supplies, materials, services or works which are available only as proprietary and/or patented articles, services or works from one contractor or supplier and for which the Director of ESPO, on the advice of the appropriate Procurement Service Manager, decides that there is no reasonably satisfactory alternative available in the European Union and for repairs to, or the supply of, parts of existing proprietary or patented articles or works including machinery or plant; a note of that decision and the reasons for it must be retained on the appropriate file and where the Contract is equal to or exceeds £189,330, a copy of the note and reasons must be provided to the Director of Corporate Resources and the Director of Law and Governance.
 - (ii) for works of art, museum specimens or historical documents;
 - (iii) which constitute a variation or extension of an existing Contract, as permitted by the Contract and/or ESPO's Standard Financial Instructions **subject to** the provisions of Rule 30 (Contract Modifications and Extensions) and Rule 31 (Novation of Existing Contracts);

In the above circumstances, the Procuring Officer must retain on file a record of the negotiations surrounding the Contract awards and notify the Director of ESPO.

- (b) Other exceptions to these Rules may only be made within the relevant law and with the authority:-

- (i) of the Director of ESPO, in consultation with the relevant Procurement Service Manager, where the Estimated Value of the proposed Contract is under £189,330. The Director of ESPO shall maintain a record specifying the reason for all such departures; or
 - (ii) of the ESPO Management Committee where it is satisfied that an exception is justified on its merits. In an urgent case the Director of ESPO in consultation with the Chairman or Deputy Chairman of the ESPO Management Committee (save where this is not practicable) may direct that an exception be made subject to this being reported to the next meeting of the ESPO Management Committee.
- (c) In all cases under Rule 6 a full record of the reasons for the exceptions shall be maintained and the Director of ESPO notified.

RULE 7

Financial Thresholds and Delegation

- (a) Financial limits and thresholds within these Rules may be varied from time to time by the Servicing Authority's Corporate Governance Committee.
- (b) Arrangements for delegation of functions to officers within these Rules may be varied from time to time by the Chief Executive.

RULE 8

Annual Reporting

The Director of ESPO in consultation with the Director of Law and Governance shall at least once in each financial year submit a report to the ESPO Management Committee in relation to the operation of these Rules including among other things details of the approved exceptions to these Rules and approved extensions to Contract where not provided for in the Contract, and proposed revisions to these Rules and/or changes required to accommodate the requirements of UK and EU procurement law as may be necessary from time to time.

RULE 9

Prevention of Corruption / Conflict of Interest

- (a) The Employee Code of Conduct (Part 5b of the Servicing Authority's Constitution) applies to any Procurement Exercise.
- (b) The following clause, or a clause that is substantially similar, will be included as a standard term and condition in every written Contract in accordance with Rule 25(c):

"ESPO/ [ESPO Client] may terminate this Contract and recover all its loss from the Contractor if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

- (i) offer, give or agree to give to anyone any personal inducement or reward in respect of this or any other ESPO/[ESPO Client] Contract (even if the Contractor does not know what has been done); or
- (ii) commit an offence under the Bribery Act 2010 or give any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972; or
- (iii) commit any fraud in connection with this or any other ESPO/ESPO Client Contract whether alone or in conjunction with contractors or employees.

Any clause limiting the Contractor's liability shall not apply to this clause".

(c) ESPO's Supplier Code of Conduct applies to any Procurement Exercise.

RULE 9 A

Counter Terrorism and Security Act 2015

Where appropriate, the Contract shall make appropriate provision for information sharing between the Contractor and ESPO in line with the General Data Protection Regulation (GDPR) and the Data Protection Act 2018, and/or such other measures as are appropriate, such as staff training, to support the Servicing Authority in meeting its duty under section 26 of the Counter-Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism.

PROCUREMENT EXERCISE

RULE 10

Pre-Estimate

- (a) Before any Procurement Exercise is begun the Procuring Officer must calculate its Estimated Value in accordance with this Rule. The estimated value for the

Procurement must not be subdivided for the purpose of reducing the total value of the contract for multiple procurements.

- (b) The Estimated Value shall be calculated as follows:
- (i) Where the Contract period is fixed the Estimated Value shall be the total estimated maximum value of the supplies, services or works to be supplied over the period covered including any extensions to the Contract;
 - (ii) Where the Contract period is indeterminate the Estimated Value shall be calculated by multiplying the estimated average monthly value by 48;
 - (iii) For feasibility studies the Estimated Value shall include the value of the study and any subsequent contracts which may be awarded to the same supplier as a result where this is known;
 - (iv) For Concession Contracts the Estimated Value shall be the estimated financial value to the supplier that shall be made over the duration of the Contract, net of value added tax.
 - (v) The Estimated Value must exclude Value Added Tax (VAT) but must include all other taxes and duties.
 - (vi) Periodic purchases for the same requirement, whether that is from the same or different suppliers, must be aggregated over a minimum of a 12 month period.
 - (vii) Where ESPO / ESPO Clients contribute to the total value of a Contract, it is the total Estimated Value that should be applied in determining the correct procedures to be applied under these Rules.
- (c) Where there is any doubt as to the Estimated Value then the procedure for the higher threshold in Rule 11 must be used.

RULE 11

Procurement Exercise Process

- (a) Based on the Estimated Value, as identified in Rule 10, Table 1 below makes provision for the minimum requirements for the subsequent Procurement Exercise.
- (b) Details of oral Quotations must be confirmed in writing.
- (c) These are total contract spend estimates equalling total contract value over the term of the contract.

Table 1: Minimum requirements for a Procurement Exercise (for exceptions see Rule 6)

Estimated Contract Value		Procurement Process	Minimum Contract Opportunity Publication	Documentation
From (£)	Up to (£)			
£0	£,5,000	Obtain a minimum of one oral/written Quotation	None	Record details

Estimated Contract Value		Procurement Process	Minimum Contract Opportunity Publication	Documentation
From (£)	Up to (£)			
Above £5,000	£25,000	Seek to obtain a minimum of 3 written Quotations	When inviting quotations officers should consider the benefits of including a local supplier in the invitation to quote where appropriate or applicable to the Contract ¹ .	Record details. (If three Quotations cannot be obtained a record of the reasons for this must be agreed in consultation with the appropriate Procurement Service Manager).
Above £25,000	Up to but not including £189,330	Seek written Quotations (to be based on a Request for Quotation document where practical) For exceptions see Rule 6 (b)	Contracts Finder and a website approved by the Director of ESPO for the purpose of notifying the supply market.	Request for Quotation issued by the Procuring Officer and Quotations received.
Equal to or Above £189,330	To the relevant EU Threshold	Formal Tender Process	The UK e-notification service where required, Contracts Finder and on a website approved by the Director of ESPO for the purpose of notifying the supply market	Formal Tender and sealed bids should be submitted via an electronic tendering system, see Rule 5 (g) (ii)
Relevant EU Threshold	Above	Formal Tender Process	The UK e-notification service required, Contracts Finder and on a website approved by the Director of ESPO for the purpose of notifying the supply market	Formal Tender and sealed bids should be submitted via an electronic tendering system, see Rule 5 (g) (ii)

RULE 12

Suitability Assessment and Award Evaluation Criteria

- (a) ESPO shall not include a pre-qualification questionnaire stage where the value of the procurement is below the EU Threshold set out in Reg 5 (1) (c) of the Public Contracts Regulations 2015. Below the EU Threshold only Suitability Assessment Questions may be asked. A standard form of Suitability Assessment Questions must be used.

¹ ESPO cannot give preference to local suppliers, as there are legislative constraints and such a policy would be incompatible with Best Value. However, ESPO recognises that there can be barriers limiting or restricting the ability of smaller suppliers to compete for ESPO business. ESPO will seek to reduce the impact of such barriers, where it can do so legally, without discrimination, and without placing unacceptable levels of risk on ESPO.

- (b) In a Procurement Exercise with an Estimated Value equal to or greater than the EU Threshold both selection and award criteria must be included. A Standard Selection Questionnaire or the European Single Procurement Document must be used for the selection criteria;
- (c) Selection criteria must be included in the evaluation process where applying the Open Tendering procedure (Rule 15) or must be the only criteria used for the shortlisting methodology where applying the Restricted procedure (Rule 16).

RULE 13

Award Methodology and Evaluation Criteria

- (a) The award criteria shall be based on the most economically advantageous Tender from ESPO's point of view. That Tender shall be identified on the basis of price or cost, using a cost-effectiveness approach, such as Life Cycle Costing and may include the best price-quality ratio which shall be assessed on the basis of the criteria, such as qualitative, environmental and/or social aspects or any other criteria linked to the subject-matter of the Contract in question.
- (b) Before a Contract can be awarded following an Open Tender procedure the supplier must meet the minimum standard for the selection criteria included in the evaluation process.
- (c) In the case of a Procurement Exercise with an Estimated Value of £25,000 or more the process for identifying the most economically advantageous Tender, including selection and award criteria, must be agreed in consultation with the appropriate Procurement Service Manager/ESPO Client and included in the RFQ/Invitation to Tender and a copy retained on file.
- (d) The Procuring Officer must notify all Tenderers of the award methodology and evaluation criteria and any sub-criteria being used in the case of the Contract in question. If weightings are to be applied to the criteria and any sub-criteria then the Procuring Officer must ensure that these are also incorporated into the Invitation to Tender.

RULE 14

Contract Opportunity Publication

- (a) Unless otherwise agreed by the Director of ESPO the Procuring Officer must ensure, for all Procurement Exercises with an Estimated Value of £25,000 or more but less than the relevant EU Threshold, that public notice is given on a website approved by the Director of ESPO for the purpose of notifying the supply market.
- (b) All Procurement Exercises within the Estimated Value of £25,000 or more must be advertised on Contracts Finder within 24 hours of the time when the Procurement Exercise is advertised in any other way. Procurement Exercises over the relevant EU Threshold must be advertised on the UK e-notification service known as Find a Tender Service (FTS) and on Contracts Finder.
- (c) For all proposed Contracts which are advertised where the Estimated Value is below the EU Threshold, a period of at least ten working days should be allowed between the date when an Invitation to Tender becomes available to all bidders and either:

- (i) the deadline for receipt of Tenders where an Open Tendering procedure is being used; or
 - (ii) the deadline for receipt of the Standard Selection Questionnaire or the European Single Procurement Document, where a Restricted Tendering procedure is being used.
- (d) The Contract Opportunity Publication must express the nature and purpose of the Procurement Exercise, stating where further details may be obtained, how and to whom an interested supplier is to respond and any other requirements such as suitability requirements or explanatory information.
 - (e) If the Estimated Value exceeds the relevant EU Threshold the Procuring Officer must ensure that the Contract Opportunity Publication is first published on the UK e-notification service known as Find a Tender Service (FTS) and then on a website approved by the Director of ESPO for the purpose of notifying the supply market and in Contracts Finder.
 - (f) A Procurement Exercise that is equal to or more than the EU Threshold for Light-Touch Services must be procured in compliance with Chapter 3, Section 7 of the Public Contracts Regulations 2015.
 - (g) Where a contract opportunity is equal to or greater than the EU Threshold a Contract Opportunity Publication should not appear in any form before publication on the UK e-notification service and neither should any advertisement contain any more information than that published on the UK e-notification service known as Find a Tender Service (FTS).
 - (h) The advertising requirements set out in this Rule 14 are minimum requirements and do not preclude further Contract Opportunity Publication where appropriate (e.g. in the local newspaper, trade or professional journal, the ESPO website).

PROCUREMENT PROCESS

RULE 15

Open Tendering

Under Open Tendering, the Procuring Officer must send Invitations to Tender to all those Persons who respond to the Contract Opportunity Publication and who meet the requirements stated therein. Where the opportunity has been advertised via the electronic tendering system the Invitation to Tenders and all supporting documents must be made available in the system for all interested parties to access subject to confidentiality agreement where applicable.

RULE 16

Restricted Tendering

- (a) Subject to Rule 16 (b), this Rule applies to Tenders where the Estimated Value is equal to or exceeds the EU Threshold.
- (b) Where the services being tendered are Light-Touch Services the Procuring Officer may choose to use this Restricted Tendering procedure but is not required to.

- (c) Under Restricted Tendering, the Procuring Officer need only send Invitations to Tender to:
 - (i) not less than five of the Persons who respond to the Contract Opportunity Publication and who best meet the shortlisting methodology agreed in Rule 12(c); or
 - (ii) where fewer than five Persons have applied or are considered suitable, to all those Persons who equal or exceed the minimum requirements for the shortlisting methodology agreed in Rule 12(c).
- (d) The shortlisting criteria and process must be prepared (in consultation with any ESPO Client) in advance of the issue of the Standard Selection Questionnaire or the European Single Procurement Document and a copy retained on file.
- (e) All Persons that do not qualify for inclusion on the shortlist to receive an Invitation to Tender must receive notice that they have been excluded from the Procurement Exercise. Any Person requesting in writing the reasons why they were unsuccessful shall be informed by the Procuring Officer of the reasons for ESPO/ESPO Client decision.

RULE 17

Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue Procedure and Innovation Partnership Procedure

The Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue Procedure and Innovation Partnership Procedure must only be used with the prior approval of the Director of Law and Governance and the Director of Corporate Resources. Competitive Procedure with Negotiation or Competitive Dialogue can only be used when criteria under PCR Reg. 26(4) are met.

Rule 17A

Concession Contracts

Procuring Officers must only establish Concession Contracts with prior consultation of the Director of Law and Governance and with the prior approval of the Director of Corporate Resources in the case of above the EU threshold.

[Note: A short briefing note for the approval of the Director of Corporate Resources, in consultation with the Director of Law and Governance, is required to justify: the use of the Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue Procedure, Innovation Partnership Procedure or the procurement of a Concession Contract.]

RULE 18

Invitations to Tender

- (a) Every Invitation to Tender must specify the latest day and hour and the place appointed for the receipt of Tenders and must state the effect of Rule 19.
- (b) Procuring Officers must give all Tenderers the same information about the Procurement Exercise and in particular information relating to the tender process,

specification, award methodology and evaluation criteria and the terms and conditions of the Contract or Framework agreement.

- c) Procuring Officers must also give all Tenderers the same information relating to questions, answers and clarifications raised during the Procurement Exercise unless they relate solely to another Person's Tender.
- (d) All Procurement Exercises equal to or greater than £25,000 shall be handled via an Electronic Tendering System where possible. Only in exceptional cases may a Procurement Exercise be undertaken not using an Electronic Tendering System. Paper Tenders must be submitted to, addressed to and opened by the Director of ESPO.
- (e) Where an Electronic Tendering System is not available and paper Tenders are to be received by the Director of ESPO, the Procuring Officer must send to the Director of ESPO a note of the subject and the closing date and time and (where appropriate) a list of the Persons invited to tender together with the Estimated Value before the closing date for receipt of Tenders.

RULE 19

Irregular Tenders

- (a) An Irregular Tender must not be accepted by either the Director of ESPO or the Procuring Officer, other than in accordance with this Rule.
- (b) A Tender is not valid unless it has been either submitted via an Electronic Tendering System or in the case paper tenders delivered to the place appointed in accordance with Rule 18 and not later than the appointed day and hour.
- (c) Tenders other than E-Tenders where the Estimated Value is equal to or greater than £189,330 are not valid unless they are received in a plain sealed envelope or parcel addressed to the Director of ESPO. The envelope or package must bear the word "Tender" followed by the subject to which it relates.
- (d) E-Tenders must be submitted in accordance with the requirements of the Electronic Tendering System used.
- (e) Where a Tender has been received which is an Irregular Tender in that it does not fully comply with the instructions given in the Invitation to Tender and/or because it is received after the appointed time for receipt or does not comply with Rules 19(b) or 19(c), the provisions of Rules 19(f) and 19(g) apply.
- (f) A Tender other than an E-Tender which is received after the closing date and time can be opened and evaluated in accordance with Rule 20 if there is clear evidence of it having:-
 - (i) been posted by first class post at least a day before the closing date; OR
 - (ii) been posted by second class post at least three days before the closing date; OR
 - (iii) been placed in the custody of a courier who has provided written assurance of delivery prior to the closing date and time.

- (g) If in other cases of Irregular Tenders the Director of ESPO, in consultation with the Director of Law and Governance, considers that there are exceptional circumstances and that the Tenderer who submitted the Irregular Tender has gained no advantage from its irregularity he or she may determine to accept the Irregular Tender and authorise that it be opened and evaluated together with any other Tenders in accordance with Rule 20. The Director of ESPO shall record in writing the reasons why each Irregular Tender has been accepted or rejected.
- (h) Irregular Tenders that the Director of ESPO has rejected under this Rule must be returned to the Tenderer by the Director of ESPO with a covering letter stating the reason for their rejection.

RULE 20

Receipt and Opening of Tenders

- (a) Rule 20 (b) to (f) apply only to Tenders where the Estimated Value is equal to or greater than £189,330 and the Tender is not an E-Tender. Rule 20 (g) applies to E-Tenders only.
- (b) On receipt of non-electronic Tenders, envelopes containing the Tenders must be date and time stamped by the Director of ESPO and shall remain in his custody until they are opened.
- (c) The Director of ESPO must keep a record of all non-electronic Tenders received.
- (d) Tenders must be opened at one time in the presence of not less than two Officers one of whom is not involved in the Procurement Exercise and who is designated by the Director of ESPO. Each Officer must initial each Tender once opened which must also be date stamped.
- (e) Particulars of all Tenders opened must be entered by the Director of ESPO upon the record which must be signed by the Officers present at the opening, together with a note of all irregular Tenders.
- (f) The Director of ESPO must forthwith send a copy of the record to the appropriate Procuring Officer (with the Tenders) and must retain a copy himself.
- (g) E-Tenders must be opened in accordance with the requirements of the Electronic Tendering System used.

RULE 21

Errors or Discrepancies in Tenders

- (a) Tenderers are not allowed to alter their Tenders after opening save in accordance with this Rule or Rule 22.
- (b) Where it is suspected that there has been an error in a Tender and following the closing date for receipt of Tenders but before acceptance of any Tender discussions may take place with Tenderers in order to:
 - (i) ensure that the Tender is constructed correctly; or

- (ii) ensure that the Tenderer has fully understood the specification; or
 - (iii) seek clarification from Tenderers of cost, quality and performance indicators.
- (c) A written note of the discussions must be made by the Procuring Officer to record the suspected error, date, time, detail of the discussion and any agreement reached.

RULE 22

Discussions and Post Tender Negotiations

- (a) In the case where the Estimated Value is below the EU Threshold, the Procuring Officer in consultation with the appropriate Procurement Service Manager may carry out Post Tender Negotiations with the Tenderer submitting the most competitive Tender in an attempt to secure improvements in the price or economic advantage in one or more of the following circumstances:
- (i) where the most competitive Tender (according to the pre-determined award methodology and evaluation criteria) submitted exceeds the Estimated Value;
 - (ii) where it is considered that the price of the most competitive Tender submitted does not represent the Best Value for money that can reasonably be obtained;
 - (iii) where Tenders have been invited only on the basis of unit prices or a schedule of rates and the lowest in aggregate is not the lowest on all items;
 - (iv) where the most competitive Tender contains conditions, trading terms, guarantees, or provisions relating to performance or service delivery less favourable than in other Tenders, or than stipulated for and this defect appears capable of being remedied by Post Tender Negotiations.
- (b) When conducting Post Tender Negotiations, the following additional rules shall apply:
- (i) At no time during the negotiations must a Tenderer be informed of the detail of any other Tender submitted or as to whether or not the Tender he submitted was the lowest.
 - (ii) During negotiations in person there must always be present at least two Officers or ESPO Client officers.
 - (iii) A note of the negotiations will be made by one of the officers referred to in the proceeding rule present recording those present, the time and location of the negotiations, detail of the discussion and any agreement reached.
 - (iv) Post Tender Negotiations shall not enable any material departure from the published specification. The Director of Law and Governance shall determine whether any proposed change to the specification constitutes a material departure.
- (c) Post Tender Negotiations are not allowed in the case of Contracts with an Estimated Value exceeding the relevant EU threshold. However, clarifications of errors or discrepancies in Tenders may take place in accordance with Rule 21.

AWARD OF CONTRACT

RULE 23

Acceptance of Tenders

- (a) A Tender can only be accepted in accordance with the initial award methodology and evaluation criteria as set out in Rule 13. Any evaluation sheets must be maintained on file in accordance with Rule 33.
- (b) Any Tender with an Estimated Value of below £25,000 (where a Request for Quotation or an Invitation to Tender is not used) may only be accepted with the prior written approval of the Director of ESPO.
- (c) If the Tender to be accepted exceeds the budget which was agreed in accordance with Rule 5(f) the Procuring Officer must ensure that sufficient funds are available and approved by the ESPO Client, appropriate budget holder, Director of ESPO, or the ESPO Management Committee as appropriate, prior to accepting the Tender.
- (d) Where an abnormally low Tender is submitted ESPO shall require the Tenderer to explain in writing the price or costs proposed and may only reject the Tender where the explanation is unsatisfactory. Where it is established that the Tender is low due to breaches of environmental, social or labour law, ESPO must reject the Tender.
- (e) Subject to Rule 1, the Director of ESPO shall have the authority to accept a Tender but in any particular circumstance may decline to give approval and refer the decision to the ESPO Management Committee to determine.

RULE 24

Notification of Contract Award

- (a) The Procuring Officer must notify the successful Tenderer of the acceptance of their Tender and for all Procurement Exercises with an Estimated Value of £5,000 or more this notification must be in writing.
- (b) In the case where the Estimated Value is £25,000 or more the Procuring Officer must notify in writing all Tenderers who submitted a Tender of the decision as soon as possible after the decision has been made.
- (c) Where a Contract with an Estimated Value of £25,000 or more is awarded ESPO must publish information as required by the Public Contracts Regulations 2015 on Contracts Finder within 90 calendar days of the date the Contract was awarded.
- (d) In the case where the Estimated Value is equal to or greater than the relevant EU Threshold the following additional Rules will apply:
 - (i) The notice in rule 24 (b) shall include the award criteria, the reasons for the decision, including the successful Tenderer's score, the score (if any) of the Tenderer receiving the notice, and the characteristics and (if appropriate) relative advantages of the successful Tenderer's Tender, any reasons why the recipient of the notice did not meet the technical specification, the name of the Tenderer awarded the Contract, as well as the date when the standstill period required in accordance with Rule 24 (d) (ii) will come to an end.

- (ii) A minimum period of 10 calendar days must elapse between the day of sending the notice in Rule 24 (b) and the date on which ESPO/ESPO Client enter into a Contract if the notice is sent electronically. Where the notice is sent by other means then either 15 days from the day of sending the notice or 10 days from the day of receipt of the notice by the last Tenderer to receive the notice must elapse. In all cases counting the day after sending the notice as day 1. The standstill period must end on a working day.
- (iii) The Procuring Officer shall ensure that a UK e-notification service contract award notice known as Find a Tender Service (FTS) is placed within 30 days of the Contract award where required. In the case where Contracts are awarded under the regime covering Light-Touch services or Dynamic Purchasing System, award notices may be grouped together in accordance with regulation 74 for Light-Touch Services and regulation 50 (5) for Dynamic Purchasing Systems.
- (iv) For every Contract or Framework Agreement covered by the Public Contract Regulations and every time a Dynamic Purchasing System is established, the Procuring Officer shall draw up a written report in accordance with the requirements outlined in regulation 84 of PCR.

RULE 25

Form of Contract

- (a) A Contract shall be formed:
 - (i) by exchange of letter or electronic communication accepting the successful Tender and incorporating the Invitation to Tender or Request for Quotation and the outcome of any subsequent negotiations and discussions; or
 - (ii) by completion of a formal Contract incorporating the Invitation to Tender or Request for Quotation, the Tender or Quotation and the outcome of any subsequent negotiations and/or discussions; or
 - (iii) by placing an order in accordance with Rule 26.
- (b) In determining and negotiating the terms and conditions of Contract, the Procuring Officer must ensure that the appropriate Standard Terms and Conditions are incorporated unless the Procuring Officer having consulted the Director of ESPO and the Director of Law and Governance considers it inappropriate to do so.
- (c) All Contracts with an Estimated Value of £25,000 or more must be in writing and where appropriate the Director of ESPO shall:
 - (i) ensure that the Contract includes a definition of the circumstances that will be considered to constitute a default on the terms of the Contract by the supplier. The Contract must provide for notice of default to be given to the supplier and for any resulting losses to be recovered from the supplier if the default is not rectified.
 - (ii) decide whether it is necessary to require suppliers to provide a Performance Bond with a third party. The need for this will depend on an assessment of the risk associated with the Contract or the supplier.

- (iii) ensure that the Contract provides for the supplier to have insurance policies, which can be inspected during the Contract period. The Director of ESPO shall be consulted on the insurance requirements.

[Note: Insurance Levels (which may be amended for a specific Procurement Exercise, where appropriate, and agreed by the Procuring Officer with the Servicing Authority's Insurance Manager):

- *[£10m] Employers' liability (any one occurrence)**
- *[£10m] Public Liability Insurance (any one occurrence)*
- *[£2m] Professional indemnity insurance (any one claim and in the aggregate)]*
- *[£10m] Product liability insurance (any one occurrence and in the aggregate)]*
- *[£2m] Cyber security insurance (any one claim and in the aggregate)]*

**Employers' liability insurance is only required for those organisations who employ staff*

To vary the insurance levels for a particular Procurement Exercise approval must be gained from the Servicing Authority's Insurance Manager, or the ESPO Client Insurance Manager as appropriate.]

- (iv) consult the Director of ESPO on the appropriate VAT requirements.

[Note: Should any advice on VAT be required for a particular Procurement Exercise, contact the Servicing Authority's Technical Accountant - Taxation Co-ordinator]

- (d) Every Contract must be signed (by electronic means or otherwise) by the Director of ESPO or an Officer designated and in cases determined by the Director of Law and Governance or where otherwise required in law, shall be under the Common Seal of the County Council in a form prepared or approved by the Director of Law and Governance.
- (e) Except after consultation with the Director of Law and Governance, works or services must not be authorised to commence or goods to be supplied where such works, services or goods are to be the subject of a Contract under seal until the Director of Law and Governance has advised that the Contract has been signed by the supplier.
- (f) The Procuring Officer shall comply with the General Data Protection Regulation (GDPR) and Data Protection Act 2018 requirements and shall include in the contract appropriate provisions.
- (g) The Procuring Officer shall ensure the contract includes a Right to Audit Clause.

RULE 26

Orders for work, goods and services

Orders for work, goods and services must only be placed in accordance with Instruction 8 of the Standard Financial Instructions.

STANDING LISTS

RULE 27

Standing Lists

- (a) Standing Lists must not be created or added to without the prior written approval of the Director of ESPO in consultation with the appropriate Procurement Service Manager.
- (b) The Procuring Officer must not use a Standing List where the Total Value of Contracts to be awarded using the Standing List is estimated to exceed the relevant EU Threshold.
- (c) The Standing List must contain the names of all Persons who are approved and indicate the categories of Contract and the values or amounts in respect of those categories for which those Persons are approved.
- (d) At least four weeks before a list is first compiled, the Procuring Officer must publish on a website approved by the Director of ESPO for the purpose of notifying the supply market, a Contract Opportunity Publication inviting applications by a specified date for inclusion in it.
- (e) The Procuring Officer must renew all Standing Lists at intervals not exceeding four years. At least four weeks before each renewal, each Person whose name appears in the list must be notified by the Procuring Officer of the intention to review the list. If they wish to remain on the list they must re-apply for inclusion. The Procuring Officer must ensure that the Contract Opportunity Publication inviting applications for inclusion in the list are published in the manner provided by Rule 27(d).
- (f) In the case where the use of a Standing List has been authorised the Procuring Officer must send Invitations to Tender to not less than four of the Persons from among those approved for a Contract of the relevant category and amount or value. Where fewer than four Persons are approved for a Contract of the relevant category and amount or value Invitations to Tender shall be sent to no fewer than three Persons. Where there are fewer than three Persons the procedure for Standing Lists must not be used unless the appropriate Procurement Service Manager advises otherwise.
- (g) The Procuring Officer in consultation with the appropriate Procurement Service Manager shall determine the criteria for selecting Persons from the list.
- (h) In such circumstances as the Director of ESPO shall determine, the Procuring Officer shall provide such information as shall reasonably be necessary of the extent to which Standing Lists have been utilised.

FRAMEWORK AGREEMENTS

RULE 28

Framework Agreements

- (a) The Procuring Officer must establish all Framework Agreements in accordance with these Rules.

- (b) Framework Agreements must not be awarded for more than 4 years, including any extensions without the prior written consent of the Director of ESPO following consultation with the Director of Law and Governance.
- (c) All suppliers on the Framework Agreement capable of performing the Contract must be invited to participate in a Further Competition unless it is clear from the terms of the Framework Agreement which supplier best meets the award methodology set out in the Framework Agreement in which case that supplier may be selected provided the Procuring Officer can demonstrate value for money. Direct Award on frameworks must be first discussed with a relevant Procurement Service Manager before proceeding if the value exceeds the threshold.
- (d) Additional suppliers may only be added to a Framework Agreement or Dynamic Purchasing System throughout its duration in circumstances where:
 - (i) the Estimated Value is below the EU Threshold;
 - (ii) the services tendered are Light-Touch Services to which the full regime of the Public Contracts Regulations 2015 is not considered to apply
- (iii) and in either case ((i) or (ii) above) provided that the Invitation to Tender states:
 - (aa) that new suppliers may be added to the Framework Agreement and;
 - (bb) how many suppliers can apply to be added to the Framework Agreement and;
 - (cc) that the same evaluation criteria and award methodology are applied when deciding whether to award a place on the Framework Agreement to new suppliers as were applied at the time of the original award.

RULE 29

Dynamic Purchasing Systems

The Procuring Officer must only establish Dynamic Purchasing Systems with the prior written approval of the Director of ESPO and in accordance with the requirements of the Public Contracts Regulations 2015 and these Rules where appropriate.

CONTRACT AMENDMENTS

RULE 30

Contract Modifications and Extensions

Contract Modifications

- (a) Subject to Rule 30(b) below, Contracts may be modified where the value of the modification is;
 - (i) below the current EU Threshold for service/supply/works Contracts; and
 - (ii) is less than 10% of the initial Contract value for service and supply Contracts and less than 15% of the initial Contract value for works Contracts.

- (b) The Director of ESPO in consultation with the appropriate Procurement Service Manager shall be authorised to modify the Contract in accordance with Rule 30(a) above provided:
 - (i) the modification does not alter the overall nature of the Contract; and
 - (ii) where there is, or has been more than one modification, the value shall be the net cumulative value of all modifications for the purpose of Rule 30(a) above.
- (c) A modification over 10% of the initial Contract value requires prior approval from the Director of ESPO, the Director of Law and Governance and the Director of Corporate Resources if above the EU threshold.
- (d) Prior to any modification being agreed which would result in an increase in the Total Value of the Contract the Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.

Contract Extensions

- (e) Where a Contract Extension has been provided for both in the Initial Procurement Documents and in the Contract in clear and precise terms then the Director of ESPO or any Officer with delegated authority under Rule 2 shall be authorised to extend the Contract in consultation with the appropriate Procurement Service Manager.
- (f) For the purpose of this Rule 30 "Initial Procurement Documents" shall mean any notice, UK e-notification service notice known as Find a Tender Service (FTS), Request for Quotation, Invitation to Tender or Specification.
- (g) Where the Initial Procurement Documents and/or the Contract does not provide for an extension the Director of ESPO in consultation with the appropriate Procurement Service Manager shall consider the extension as a modification to the Contract and shall only be authorised to extend the Contract in accordance with Rules 30(a) and 30(b) above.
- (h) In all other circumstances and where Rule 30(e) and 30(g) above do not apply, the Director of ESPO in consultation with the appropriate Procurement Service Manager and the Director of Law and Governance must gain the prior approval of the Director of Corporate Resources. This authorisation must be issued before the extension is carried out.
 - (i) Prior to any extension being agreed which would result in an increase in the Total Value of the Contract the Procuring Officer must ensure that sufficient additional budget provision has been approved by the budget holder.

RULE 31

Novation of Existing Contracts

The novation of a Contract to a new Person irrespective of value requires the prior written approval of the Director of ESPO in consultation with the Director of Law and Governance.

RULE 32

Early Termination of Contracts

Unless a provision for early termination is clearly stated in the Contract the Procuring Officer shall seek advice from the Director of Law and Governance where it is intended to terminate a Contract early. Where the Total Value of the Contract is equal to £189,330 or more the prior written approval of the Director of ESPO shall also be obtained.

MISCELLANEOUS PROVISIONS

RULE 33

Document Retention

- (a) All Contract records that might be required in court proceedings must be retained for at least six years and any under seal for at least twelve years from expiry of the Contract.
- (b) Where the Contract is externally funded any contingent liabilities and/or grant conditions must be taken account of by the length of the retention period.

RULE 34

Supervision of Contracts by Third Parties

- (a) The Procuring Officer shall ensure that it is a condition of any Contract between ESPO and any Person (not being an Officer of ESPO) who is involved in a Procurement Exercise or the management of a Contract on behalf of ESPO that in relation to that Contract he or she must comply with the requirements of these Rules and other reasonable requirements of ESPO.
- (b) Such Person must:
 - (i) at any time during the carrying out of the Contract produce to the Director of ESPO or his representative or an officer with delegated authority or ESPO Auditor on request all records maintained by him or her in relation to the Contract; and
 - (ii) on completion of the Contract transmit all records to the Director of ESPO or an officer with delegated authority.

RULE 35

Nominated Sub-Contractors and Suppliers

- (a) Where a sub-contractor or supplier is to be nominated by ESPO/ESPO Client to a main contractor, the provisions of these Rules shall have effect.
- (b) The terms of an Invitation to Tender under Rule 18 must require an undertaking by the Tenderer that, if selected, they will be willing to enter into a Contract with the main contractor on terms which indemnify the main contractor against their own

obligations under the main Contract in relation to the work, supplies or services included in the sub-contract.

SCHEDULE 1

Interpretation

1. "Best Value" means the duty of ESPO to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
2. The "Chief Executive" is the Chief Executive Officer of the Servicing Authority, Leicestershire County Council.
3. "Concession Contract" means a works concession Contract or services concession Contract for a pecuniary interest concluded in writing by means of which the concessionaire is entrusted to execute works or provide and manage services (other than the execution of works) to one or more economic operators, the consideration for which consists either solely in the right to exploit the works or the services that are the subject of the Contract or in that right together with payment; and that meets the requirements of Regulation 3(4) of the Concession Contracts Regulations 2016 (CCR 2016).

Regulation 3(4) of the CCR 2016 further defines the necessary characteristics of the arrangement for the purposes of the regime, which are:

- (i) the award of the Contract must transfer to the contractor the operating risk in exploiting the works or services encompassing demand or supply risk or both; and
- (ii) the part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.

4. "Concession Contracts Regulations 2016" means the Concession Contracts Regulations 2016 as amended, consolidated, extended, re-enacted or replaced. These Regulations implement Directive 2014/25/EU of the European Parliament and of the Council on Public Procurement.
5. "Contract" means a binding agreement between two or more parties for performing, or refraining from performing, some specified act(s) in exchange for lawful consideration.
6. "Contract Extension" means an extension to the duration of the Contract, but not including any alteration to the scope of the Contract.
7. "Contracts Finder" means the web-based portal provided for the purposes of Part 4 of the Public Contracts Regulations 2015.
8. "Contract Opportunity Publication" is the means by which a Procurement Exercise is advertised and includes (where appropriate) the 'Contract Notice' and Contracts Finder as defined in the Public Contract Regulations 2015.
9. "Contract Modification" means an alteration to the scope of the Contract, but not the extension of the duration of the Contract.
10. "Council" means Leicestershire County Council.
10. "Council" means Leicestershire County Council.

- 11 "Direct Employee: a person who works as an employee of ESPO and is paid a salary by it, rather than being employed through an agency or other third party".
12. The "Director of Corporate Resources" is the Director of Corporate Resources of the Servicing Authority, Leicestershire County Council, except in the case of a procurement exercise conducted exclusively for an ESPO Client other than the Servicing Authority, where the advice or authority required under these Contract Procedure Rules has been obtained from the equivalent officer(s) of that ESPO Client.
13. The "Director of Law and Governance" is the Director of Law and Governance of the Servicing Authority, Leicestershire County Council, except in the case of a procurement exercise conducted exclusively for an ESPO Client other than the Servicing Authority, where the advice or authority required under these Contract Procedure Rules has been obtained from the equivalent officer(s) of that ESPO Client.
14. "Dynamic Purchasing System" means a completely electronic process, which has a limited duration, for making commonly used purchases, as more particularly defined and described in the Public Contract Regulations 2015.
15. "Electronic Tendering System" means an electronic tendering system approved in accordance with Rule 5 (g) (ii).
16. The "ESPO Management Committee" is a joint committee appointed by ESPO's member authorities with the purpose of managing ESPO in accordance with Section 102 of the Local Government Act 1972. The committee comprises an equal number of elected members from each member authority.
17. "ESPO Client" means one or more ESPO member authorities and/or other contracting authorities, for which ESPO is managing a procurement process.
18. "Estimated Value" means the value as estimated under Rule 10.
19. "EU Threshold" means the respective threshold for Services, Supplies, Works or Light-Touch Services contracts referred to in the Public Contract Regulations 2015 and the Concession Contracts Regulations 2016.
20. "E-Tender" means a Tender that has been submitted using an Electronic Tendering System.
21. "Formal Tender Process" is a process following the requirements of Open Tendering, Restricted Tendering, Standing List, Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue or Innovation Partnership Procedure and Formal Tender shall be construed accordingly.
22. "Framework Agreement" is a general term for agreements with suppliers which set out terms and conditions under which specific purchases (call-offs) can be made throughout the term of the agreement. The Framework Agreement may, itself, be a contract to which the EU procurement directive and Public Contracts Regulations 2015 apply.
23. A "Further Competition" is undertaken where not all the terms of a proposed Contract are laid down in a Framework Agreement. It involves re-opening competition between the economic operators which are parties to the Framework Agreement and which are capable of performing the proposed Contract, on the basis of the same or, if necessary, more precisely formulated terms, and where appropriate other terms referred to in the Contract documents based on the Framework Agreement.

24. "Invitation to Tender" means the document(s) containing the specification, proposed terms and conditions and other appropriate information as issued to the Tenderers to solicit Formal Tenders.
25. "Irregular Tender" means a Tender that does not fully comply with the instructions given in the Invitation to Tender.
26. "Life-Cycle Costing" means all or part of the following costs over the life-cycle of a product, service or works, to the extent that they are relevant:
 - (i) Costs of acquisition,
 - (ii) Costs of use, such as consumption of energy and other resources,
 - (iii) Maintenance costs,
 - (vi) End of life costs, such as collection and recycling costs,
 - (v) Costs imputed to the environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified. These costs may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.
27. "Light-Touch Services" means those services referred to in regulation 74 and Schedule 3 of the Public Contracts Regulations 2015.
28. "Officer" means an employee of ESPO.
29. "Person" includes a partnership, body corporate or unincorporated association.
30. "Post Tender Negotiations" means the ability to negotiate with a Tenderer after a Tender has been opened and evaluated in accordance with the published evaluation criteria for the purposes of securing an improvement in the delivery of the Contract including but not limited to improvements in price.
31. "Procurement Exercise" means any process by which goods, services and/or works are to be procured including but not limited to Request for Quotations and Formal Tender Processes. For the purpose of these Rules a Contract for a Concession, a contract via a Framework Agreement/Dynamic Purchasing system shall be treated as a Procurement Exercise.
32. "Procuring Officer" means any Officer, acting under the delegated powers of the Director of ESPO, who is responsible for the procurement of goods and services.
33. "Procurement Service Manager" is the most senior Procurement Officer within an ESPO Category Team, and is responsible for managing the team.
34. "Public Contracts Regulations 2015" means the Public Contracts Regulations 2015 as amended, modified, consolidated, extended, re-enacted or replaced. These Regulations implement Directive 2014/24/EU of the European Parliament and of the Council on Public Procurement.
35. "Quotation" means an offer to sell works, goods and/or services at a stated price under specified conditions. A Quotation may or may not be written.
36. "Request for Quotation" ("RFQ") means a document or documents containing the specification, and proposed terms and conditions issued to potential suppliers to solicit written Quotations.

37. "Standard Terms and Conditions" means the standard contractual terms used by ESPO, including those attached to iprocurement orders (or orders generated by 'line of business' systems, those included in Request for Quotation templates, and standard industry terms.
38. "Standard Selection Questionnaire" means a questionnaire that complies with the Crown Commercial Service statutory guidance relating to Standard Selection Questionnaires.
39. "Standing List" means a list of Persons which has been established in accordance with Rule 27.
40. "Suitability Assessment Question" means a question which relates to the subject matter of the procurement and is proportionate and which ESPO requires for assessing the Tenderers suitability.
41. "Tender" means the formal offer from a Tenderer, which is capable of acceptance by ESPO/ESPO Client, which is a response to an Invitation to Tender. It shall include all documents comprising the submission including pricing, technical specification and method statements as well as information about the Tenderer. A written Quote or Quotation is also a Tender. The term "Tender" also includes an E-Tender except where the context implies otherwise.
42. "Tenderer" or "Tenderers" means the Person or Persons invited to participate in a Procurement Exercise.
43. "Total Value" means the value of a Contract which has been calculated in accordance with Rule 10(b) reading where appropriate Total Value for Estimated Value.
44. "UK e-notification service" known as "FTS" (Find a Tender Service) is defined in the Public Contract Regulations 2015 (as amended)
45. "In writing" or "written" for the purpose of interpreting these Rules includes transmission by any electronic means which have been approved by the Director of Law and Governance in consultation with the Director of Corporate Resources.
46. Words imparting the masculine include the feminine gender.
47. "Rule(s)" means these Contract Procedure Rules as may be amended from time to time.

[end of Contract Procedure Rules]