



Minutes of a meeting of the ESPO Management Committee held at County Hall, Glenfield, Leicestershire on Tuesday, 28 February 2017.

PRESENT

Mr. I. Monson CC (in the Chair)

Cambridgeshire County Council

Mr. D. Connor CC
Mr. R. Hickford CC

Norfolk County Council

Mr. I. Monson CC
Ms. S. Whitaker CC

Leicestershire County Council

Dr. R. K. A. Feltham CC
Mr. G. Hart CC

Peterborough City Council

Mr. J. Holdich CC
Mr. D. Seaton CC

Lincolnshire County Council

Mr. R. Foulkes CC
Mrs. S. Rawlins CC

Warwickshire County Council

Mr. J. Clarke CC
Mr. D. Parsons CC

1. MINUTES OF THE MEETING HELD ON 30TH NOVEMBER 2016
2. TO ADVISE OF ANY ITEMS THAT THE CHAIRMAN HAS DECIDED TO TAKE AS URGENT ELSEWHERE ON THE AGENDA.
3. DECLARATIONS OF INTERESTS IN RESPECT OF ITEMS ON THIS AGENDA.
4. Items referred by the Finance and Audit Subcommittee.
There are no specific items referred. The issues considered by the Subcommittee are covered in items 6 and 13 which appear elsewhere on the agenda.
5. External Audit Plan
Report of PricewaterhouseCoopers.
6. Internal Audit Charter for ESPO.
Report of the Consortium Treasurer.
7. Proposed Changes to the Contract Procedure Rates.
Report of the Director.
8. Annual review of Organisational Approach to Risk Management
Report of the Director.
9. Director's Progress Update.
Report of the Director.
10. Date of Next Meeting.

The next meeting of the Committee is scheduled to take place on Wednesday 21st June 2017 at 11.00am at County Hall.

11. Supplementary Information informing the Director's Progress Update.

Report of the Director.

(Exempt under paragraphs 3 and 10 of Section 100(A)).

12. Forecast Outturn 2015/16 and Draft MTFS.

Joint Report of the Director and Consortium Treasurer.

(Exempt under paragraphs 3 and 10 of Section 100 (A)).

Times Not Specified
28 February 2017

CHAIRMAN



Minutes of a meeting of the ESPO Management Committee held at County Hall, Glenfield, Leicestershire on Wednesday, 30 November 2016.

PRESENT

Mr. I. Monson CC (in the Chair)

Leicestershire County Council

Dr. R. K. A. Feltham CC
Mr. G. Hart CC

Norfolk County Council

Mr. I. Monson CC
Ms. S. Whitaker CC

Cambridgeshire County Council

Mr. I. Bates CC

Lincolnshire County Council

Mr. R. Foulkes CC

Warwickshire County Council

Mr. J. Clarke CC
Mr. D. Parsons CC

33. Minutes of the previous meeting.

The minutes of the meeting held on 27th September 2016 were taken as read, confirmed, and signed, subject to the resolution in minute 32 being amended to read as follows:-

Minute 32

'RESOLVED:

- a) That the contents of the report are noted;
- b) That the Committee support the proposal to establish a company limited by shares;
- c) That approval in principle be given to the approach outlined in the report subject to a further paper being submitted to the Management Committee on the implications of:-
 - (i). Shares being held on behalf of ESPO Members by Leicestershire County Council for funding purposes, and for administrative and governance convenience;
 - (ii). both profits/surpluses and also liabilities are shared among the members which would be set out in a separate legal agreement between members.'

34. Urgent Items.

There were no urgent items for consideration.

35. Declarations of interests.

The Chairman invited members who wished to do so to declare any interest in respect of items on the agenda for the meeting.

No declarations were made.

36. Items referred by the Finance and Audit Subcommittee.

There were no items referred by the Finance and Audit Subcommittee.

37. Director's Progress update.

The Committee considered a report from the Director which provided an update of the actions and progress made since the last Management Committee meeting held on 27 September 2016. A copy of the report, marked Agenda Item 5, is filed with these minutes.

The Committee noted that the depreciation in the value of the pound would impact on the cost base of ESPO and going forward would slow down the projected rate of growth. With regard to gas sales the Committee was advised that whilst volumes and prices were down on last year the key driver of income was the number of customers and this had not fallen.

With regard to sickness absence the Management Committee welcomed the continued focus on this issue and the reduction achieved in short term sickness absence.

RESOLVED

That the report be noted.

38. Supplementary Information to Inform the Director's Progress Report.

The Management Committee received an exempt report from the Director which set out further supplementary information regarding the Director's Progress Update. A copy of the exempt report, marked 'Agenda Item 6', is filed with these minutes.

The exempt report was not for publication as it contained information relating to the financial or business affairs of a particular person (including the authority holding that information).

In response to questions and comments made the Committee was advised as follows:-

- i) the lessons learnt for the implementation of the ERP system and from specific frameworks developed for member authorities would be shared with the Senior Officer Group which comprised the procurement specialists from each constituent authority;
- ii) ESPO had developed its Smart Buy brand on some key lines and would look to roll this out to other lines depending on the volume of sales;
- iii) there has been some progress towards automation with a view to improving the pick and flow of goods and to reduce staff costs. Further investment in automation is currently the subject of consideration and a full business case would be submitted in the summer of 2017.

RESOLVED

That the supplementary information informing the Director's Progress Update be noted.

39. MTFS Monitoring.

The Committee considered an exempt joint report of the Director and the Consortium Treasurer monitoring the Medium Term Financial Strategy against the first seven months of trading in the 2016/17 financial year. A copy of the report, marked 'Agenda Item 7', is filed with these minutes.

The exempt report was not for publication as it contained information relating to the financial or business affairs of a particular person (including the authority holding that information).

In response to questions, the Director advised:-

- i) Trading conditions had become difficult and the decrease in the value of the pound would pose a significant challenge in maintaining margins whilst still being competitive. Looking forward the potential for growth was challenging and the roll forward of the MTFS would need to reflect that.
- ii) Education spending is now under pressure and ESPO continues to work with Multi Academy Trusts not just in relation to catalogue sales but also to raise awareness of how ESPO Frameworks could assist in reducing the financial and administrative burden in schools.

RESOLVED:

That the contents of the report be noted.

40. Project Update.

The Committee considered an exempt report of the Director on the proposed strategic project. A copy of the report marked 'Agenda Item 8' is filed with these minutes.

The exempt report was not for publication as it contained information relating to the financial or business affairs of a particular person (including the authority holding that information).

The Director updated the Committee on the recent discussions following the decision to close the merger project. The costs incurred amounted to just over £30,000.

The Committee also received a verbal update from a representative of KPMG who had assisted in the project. He advised members of the difficulties that had been encountered and the lessons learnt going forward if ESPO were to embark on something similar in the future.

Members noted the verbal updates provided and whilst it was disappointing the right decision had been made.

RESOLVED

That the report be noted.

41. Procurement of Goods for Resale Through The Catalogue

The Committee considered an exempt report of the Director on the approach proposed for the procurement of goods for resale through the catalogue and the future process for managing such procurements. A copy of the report marked 'Agenda Item 9' is filed with these minutes.

The exempt report was not for publication as it contained information relating to the financial or business affairs of a particular person (including the authority holding that information).

RESOLVED:-

That the approach outlined in the report concerning the procurement of goods for resale through the catalogue be supported.

42. International Sourcing.

The Committee considered an exempt report of the Director on the progress made on a key priority for ESPO, that relating to the international sourcing of goods. A copy of the report marked 'Agenda Item 10' is filed with these minutes.

The exempt report was not for publication as it contained information relating to the financial or business affairs of a particular person (including the authority holding that information).

RESOLVED:-

- a) That the ongoing commercial advantage being achieved as a result of moving exercise books from UK manufacture to an international supply chain be noted;
- b) That the commercial impact of Brexit on importing into the UK and the volume limitations of the existing supply chain be noted;
- c) That the intention to move the exercise book supply to a new manufacturer in China to maintain commercial advantage through lower manufacturing costs and more vertically integrated supply chain be noted;
- d) That the lessons learnt from the first peak trading year and the actions being taken to batch produce and ship into Felixstowe be noted.

43. Modern Slavery Act.

The Committee considered an report of the Director concerning the implications for ESPO of the Modern Slavery Act 2015. A copy of the report marked 'Agenda Item 11' is filed with these minutes.

RESOLVED:-

That noting that the provisions of the Act do not apply to ESPO, it be agreed that ESPO, as a responsible and ethical public procurement organisation, should seek to comply with the Act.

44. Date of Next Meeting.

It was noted that the next meeting of the Committee would be held on Tuesday 28th February 2017 at 11am at County Hall, Glenfield.

45. ANY OTHER ITEMS WHICH THE CHAIRMAN HAS DECIDED TO TAKE AS URGENT.

30 November 2016

CHAIRMAN

This page is intentionally left blank

Audit strategy memorandum

Year ending 31 March 2017

*Eastern Shires
Purchasing
Organisation*

February 2017





Private and Confidential

Eastern Shires Purchasing
Organisation
Barnsdale Way
Grove Park
Enderby
Leicester
LE19 1ES

February 2017

Dear Management Committee members,

Eastern Shires Purchasing Organisation (ESPO) – 2016/17 Audit Strategy

I am delighted to present our plan for the audit of the financial statements of ESPO for the year ending 31 March 2017.

The opportunity to discuss our plan with you enables us to understand your expectations and supports us in providing the highest level of service.

We have shared a copy of this plan with management and have incorporated their comments as appropriate. We shall continue to work closely with them to ensure that our approach is updated between now and the year end, incorporating any further business changes and reflecting any new accounting or auditing issues as they arise.

We look forward to discussing this plan with you at your meeting on 28 February 2017. Attending the meeting will be Catherine Bru.

Yours faithfully

Alison Breadon

For and on behalf of PricewaterhouseCoopers LLP

*PricewaterhouseCoopers LLP, Donington Court, Pegasus Business Park, Castle Donington, East Midlands, DE74 2UZ
T: +44 (0) 1509 604 000, F: +44 (0) 1509 604 010, www.pwc.co.uk*

Contents

| | | |
|------------------------------------------------------------------------------------|--------------------------------|-----------|
|  | <i>Our audit approach.....</i> | <i>4</i> |
|  | <i>Audit timetable.....</i> | <i>10</i> |
|  | <i>Risk of fraud</i> | <i>11</i> |
|  | <i>Engagement team.....</i> | <i>12</i> |
|  | <i>Audit fees.....</i> | <i>13</i> |
|  | <i>Appendices.....</i> | <i>14</i> |



Section 1

Our audit approach

Our audit is based upon a series of elements that ensure quality, rigour, relevance and the highest level of professionalism. It is designed to enable us to fulfil our requirements as auditors in an increasingly complex and more demanding reporting and regulatory environment. Our approach incorporates the most up to date tools and methodology in the delivery of the audit.

We work hard to ensure a quality, efficient audit that minimises management time and provides relevant insight and gives maximum assurance.

PwC's audit is built on a foundation of using people who understand the industry you operate in, and advanced technology to help us keep our audit focused on the areas that matter, undertake our work efficiently and to help us keep your information safe. This together with our six step audit process, results in an audit that is robust, insightful and relevant.

1. Client acceptance and independence

2. Deep business understanding

3. Relevant risks

4. Intelligent scoping

5. Robust testing

6. Meaningful conclusions



Smart
People



Smart
Approach



Smart
Technology



The PwC Audit

Section 1

Our audit approach (continued)

Client acceptance and independence

We are required to assess our independence as your external auditor. We have made enquiries of all PwC teams providing services to you and of those responsible in the UK Firm for compliance matters. We can confirm that we continue to be independent of the organisation.

Throughout our work with you, any potential further work outside of the audit, which could impact our independence, will be promptly discussed with the Management Committee.

Deep business understanding

Auditing Standards and other regulations cover a comprehensive list of areas to be considered when developing our understanding. These include the nature of the business and industry, strategy, performance, internal controls and systems. Achieving an understanding of your business has multiple objectives:

- to establish business risks faced by ESPO, which forms the foundation for our audit risk assessment;
- to scope and design our audit to respond to the relevant risks; and
- to enable us to provide business insight.

This understanding is enhanced by the breadth of commercial expertise and experience both within the audit team and the wider firm and which enables us to provide meaningful perspectives on the Organisation. We have identified some of the key business changes currently influencing management's decisions which may impact the audit:

Presentation of financial statements

The Organisation is considering changing the way in which income streams presented in the accounts to reflect more accurately how the business operates. We will ensure that the prior year comparatives are appropriately presented in the financial statements, and appropriate disclosures made.

Implementation of a new gas system

The Organisation has implemented Optima, a new gas system, in 2016/17. The system rollout has been halted due to some issues with recording, so the existing system, Gems, is being run concurrently. We understand that in the 2016/17 financial systems, data from both systems will be included.

We will understand the steps taken by management to ensure that the figures reported in the financial statements are accurate and will perform testing to ensure that we have sufficient assurance that the financial statements are not materially misstated.

Becoming a limited company

Although there will be no impact on the 2016/17 financial statements, the Organisation continues to explore alternative options including becoming a limited company in the near future to increase its trading remit.

We will provide insight to management on how best to achieve and manage this transition.



Section 1

Our audit approach (continued)

Relevant audit risks

We will focus our audit effort on those areas that we determine to be of higher risk, which we have identified through our rigorous planning procedures and discussions with senior management to date. In our view there are two significant audit risks as specified by Auditing Standards.

We determine if risks are significant, elevated or normal and whether we are concerned with fraud, error or judgement. This subsequently drives the design of our testing procedures.

| | |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| Significant | Risk of material misstatement due to the likelihood, nature and magnitude of the balance or transaction. These require specific focus in the year. |
| Elevated | Although not considered significant, the nature of the balance/area requires specific consideration. |
| Normal | We perform standard audit procedures to address normal risks in all other material financial statement line items. |



Section 1

Our audit approach (continued)

| Risk | Significant / elevated risk | Reason for risk identification | Key aspects of our proposed audit approach |
|---------------------------------|-----------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Management override of controls | Significant | This is a required significant risk under the ISAs. There is an inherent risk of fraud as a result of management override of controls in all entities as senior management can potentially override controls. | <p>We will:</p> <ul style="list-style-type: none">• Review your internal control structure.• Focus our work on testing of journals. This will provide you with assurance over the level of manual and automated journals. We will test all journals which meet our considered view of where fraudulent journals may occur• Perform targeted testing over significant estimates within the financial statements.• Carry out unpredictable procedures – this will involve performing ad hoc testing that has not previously been performed over one or more controls or financial statement balances.• Focus our detailed audit work on areas where fraud could be committed and where there is less segregation of duties.• Consider and challenge areas of significant estimate or judgement which materially impact the financial statements; and• Address all areas with professional scepticism and corroborate management’s explanations by supporting evidence. |



Section 1

Our audit approach (continued)

| Risk | Significant / elevated risk | Reason for risk identification | Key aspects of our proposed audit approach |
|----------------------------------------------|-----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Fraud in Revenue and Expenditure recognition | Significant | <p>Again, another required significant risk under ISA's is Fraud in Revenue Recognition. The ISAs assume a 'rebuttable presumption' that there is a significant risk of fraud in revenue recognition in all businesses.</p> <p>For expenditure, we consider the significant risk is focused around judgements and estimates (accruals and provisions) and any large, one off transactions.</p> | <p>We will:</p> <ul style="list-style-type: none">• Review the design and operating effectiveness of key income and expenditure controls.• Evaluate the accounting policies for income and expenditure recognition.• Test the appropriateness of journal entries and other adjustments. This will include testing accounting estimates and other adjustments for non-pay expenditure items.• Review accounting estimates for income and expenditure, for example, rebates and provisions.• Analyse trends in relation to income and expenditure during the year and seek to understand any unusual variations.• Reconcile your management information to the information presented in the accounts on a gross basis.• Undertake testing procedures to ensure rebate income is recognised in line with the accounting policy and within the correct period to which it relates.• Test the existence of provisions. |



Section 1

Our audit approach (continued)

Intelligent Scoping

Materiality

The extent and nature of the audit procedures we perform is underpinned by our assessment of materiality. Our overall materiality level for the group is based on 2% of forecast revenue, which we consider to be the most appropriate performance measure for the Organisation. We set overall materiality to assist our planning of the audit strategy and to assess the impact of any adjustments identified however we are required by International Auditing Standards (UK&I) to communicate accumulated misstatements identified during the audit to those charged with governance, unless they are clearly trivial. We have proposed our de minimus SUM level (Summary of Uncorrected Misstatements) to be 5% of our overall materiality levels to ensure that some items, whilst individually immaterial, are still reported to you appropriately. This is consistent with our approach last year.

| Benchmark | Revenue / Total assets as at 31 March 2016 | Overall materiality level (£'000) | De minimus SUM level (£'000) |
|---------------|-----------------------------------------------|--------------------------------------|---------------------------------|
| 2% of revenue | £88.5 million | 1,769 | 88 |



Section 2

Audit timetable

Set out below is the proposed audit timetable for the year:

| Activity | Proposed timing |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| Management Committee – Presentation of audit plan | 28 February 2017 |
| Audit deliverables agreed for interim audit | 27 February 2017 |
| Interim audits | |
| Audit work | 6 March 2017 – 10 March 2017 |
| <ul style="list-style-type: none">• Controls testing for key business cycles• Set up HALO over journals, revenue and payroll• Testing of IT controls• Early substantive testing | |
| Audit deliverables agreed for final audit | 12 May 2017 |
| Final audit and accounts | |
| Audit work | 12 June 2017 - 23 June 2017 |
| <ul style="list-style-type: none">• Full scope audits• Review of financial statement disclosures | |
| Clearance meeting with Clive Pitt | 23 June 2017 |
| Share draft reports with management for comment | July 2017 |
| Response from management on draft reports | July 2017 |
| Management Committee papers issued | September 2017 |
| Management committee – Presentation of final findings | September 2017 |



Section 3

Fraud Risk Assessment

We are required under ISA 240, “The auditor’s responsibility to consider fraud in an audit of financial statements” to explicitly consider the risk of fraud while planning our audit. There are generally three conditions that exist when a fraud takes place; incentive, opportunity and rationale.

We perform specific testing that considers fraud and also undertake general procedures including making enquiries of senior management and other officers of the Organisation, and the evaluation of management’s processes and controls relating to fraud.

| Fraud risk area | Audit response |
|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Deliberate manipulation of results | <ul style="list-style-type: none">• Review journals meeting key risk criteria.• Perform unpredictable audit procedures, such as testing items that are immaterial or would not normally be included in our testing.• Review areas of significant management judgement and unusual transactions. |
| Improper revenue recognition | <ul style="list-style-type: none">• Auditing standards require us to ordinarily presume there is a risk of material financial statement misstatement due to fraud related to revenue recognition.• Our procedures will include a review of revenue recognition policy changes, review of significant adjustments to revenue and appropriate substantive procedures. |
| Management override of controls | <ul style="list-style-type: none">• Even if specific risks of material misstatement due to fraud are not identified, there is a possibility that management override of controls could occur. This risk is addressed through assessment of the overall control environment and the ‘tone at the top’ of the organisation together with the other procedures set out in this table (e.g. journal testing etc.). |



Section 4

Engagement team

Our core team

Our team has been structured to bring the right combination of skills, experience and innovation to the audit.

Alison Breadon

Partner

07740 894 795

Alison.breadon@pwc.com

Alison will have overall responsibility for your audit in 2016/17, providing you with challenge and insight.

Catherine Bru

Audit manager

07701 296 653

catherine.j.bru@pwc.com

Catherine will be responsible for the day to day delivery of the 2016/17 audit, ensuring that the fieldwork runs smoothly and to plan. She will liaise with Clive and the finance team to provide regular progress updates.





Section 5

Audit fees

Set out below are our audit fees for the audit.

| | 2017 £ | 2016 £ |
|------------------------|---------------|---------------|
| Recurring audit fee | 25,000 | 25,000 |
| Total audit fee | 25,000 | 25,000 |

This fee includes expenses, however excludes VAT.

We have based the fee level on the following assumptions:

- Management meeting the timetable of deliverables, which we will agree in writing;
- We are able to use the work of internal auditors for the purposes of our audit, where planned; and
- We are able to draw comfort from your management controls.

As always, where such changes materially alter the level of underlying work required, we will discuss this with Clive Pitt and the Management Committee in order to ensure any resultant fee changes, either up or down are agreed in advance.

Appendices

| | |
|----------------------------------------|-----------|
| <i>Appendix 1: Recent Developments</i> | <i>15</i> |
| <i>Appendix 2: Engagement letter</i> | <i>16</i> |



Appendix 1 - Recent developments

Keeping you up to date

Accounting and other developments

What is the issue?

Over the next three years, there will be a number of amendments and additions to accounting standards.

For **2016/17**, there are no new standards, but some have been amended, including:

- IAS 1 *Presentation of Financial Statements*
- IAS 16 *Property, plant and equipment* and IAS 36 *Intangible assets*

For **2017/18**:

- IAS 7 *Cash flow statements*

For **2018/19**:

- IFRS 15 *Revenue from contracts with customers*
- IFRS 9 *Financial instruments*

For **2019/20**:

- IFRS 16 *Leases*

How does it impact you?

- **Amendment** - IAS 1 *Presentation of Financial Statements* – the amendment focusses on whether disclosures are material and encourages entities to apply professional judgement when determining what information to disclose in their financial statements.
- **Amendment** - IAS 16 *Property, plant and equipment* and IAS 36 *Intangible assets*. The amendment clarifies that revenue based depreciation methods are not allowed.
- **Amendment** - IAS 7 *Cash flow statements* – the standard been amended to require additional disclosures relating to changes in liabilities relating from financing activities. These disclosures include changes arising from cash flow and non-cash flow changes.
- **Implementation** - IFRS 15 *Revenue from contracts with customers* will need to be implemented along with the subsequent clarifications to the standard. The expected implementation date is 1 January 2018. Applying the new standard will require a full review of all income streams
- **Implementation** - IFRS 9 *Financial instruments* has an expected implementation date of 1 January 2018. As ESPO does not currently hold complex financial instruments, the impact is likely to be minimal. Under the new standard, there will be only three categories of financial asset:
 1. fair value through P&L;
 2. fair value through other comprehensive income; and
 3. amortised cost
- **Implementation** - IFRS 16 *Leases* has an expected implementation date of 1 January 2019. The standard will bring all leases onto the statement of financial position.

How can we help?

We can support you in ensuring that new and amended standards are appropriately incorporated into the Organisation's financial statements. We can review your current disclosures and provide best practice examples to improve your current reporting.



Appendix 2: Engagement letter

Private and confidential

ESPO Management Committee
Eastern Shires Purchasing Organisation
Barnsdale Way
Grove Park
Enderby
Leicester
LE19 1ES

14 February 2017

Attn: Mr Clive Pitt and Mr John Doherty

Dear Sirs,

Provision of audit services in connection with your non-statutory annual financial statements for Eastern Shires Purchasing Organisation (ESPO) (the “entity”)

Thank you for engaging us to provide you with services on terms which are described in this letter and the attached terms of business (version ToB 10/16). These together form the agreement between us.

Background and purpose

You have advised us that you require an audit of your non-statutory financial statements of Eastern Shires Purchasing Organisation (the Organisation) for the year ended 31 March 2017. The services are provided solely for your private use to assist you to discharge your stewardship obligations and fiduciary responsibilities in respect of the purpose.

The services

The services described in the agreement will comprise audit services for the financial year ending 31 March 2017 and subsequent years until terminated or superseded with a new written agreement. Any unfinished audits on the Organisation’s financial statements for prior years will remain subject to the relevant previously signed agreement.

The scope of our audit services and our respective responsibilities are set out in Schedule 1.



Appendix 2: Engagement letter (continued)

Timetable and duration

We propose to start work in February 2017 and estimate that we will complete our audit by September 2017. This is an estimate in advance of starting work and we will keep you informed of our progress and of any proposed changes in this timetable.

Staffing

Alison Breadon is the person in charge of providing the services to you, assisted by other staff as we believe are required. If we believe that it is necessary for us to change any of the named individuals we will let you know.

Client contact

You have designated Clive Pitt to be our primary contact when delivering the services as a person with the knowledge, experience and ability to make decisions in relation to the services and our recommendations.

Our day to day contact for administrative matters will be Sheetal Lakhani.

Fees

Details of our fees and proposed billing arrangements are the subject of a separate letter which will form part of the agreement.

Additional provisions regarding our fees and billing arrangements are set out in the attached terms of business.

Terms of business

Liability limitation

We draw your attention to clauses 8 and 12.3 in the attached terms of business which amongst other things limit (i) our total liability for all claims connected with the services or the agreement, which will be 3 times fees or £1,000,000, whichever is greater, as detailed in clause 8.2 and (ii) the time for bringing any such claim.

Agreed amendments to the terms of business

Clause 2.5 of the terms of business does not apply. The scope of our services, including the auditors' responsibilities in relation to fraud in the audit of the financial statements, are described in Schedule 1.

In clause 3.1 the final sentence "We will not verify any information given to us relating to the services" does not apply.

Appendix 2: Engagement letter (continued)



Clause 10.2 is amended to read: “Release – We do not release materials which belong to us (including our working papers, which shall include all documentation prepared by us in relation to the services) unless we have specifically agreed to do so or where required by law or regulation. We may require a release letter from the recipient as a condition of disclosure.”

The following additional clauses shall be added to the terms of business:

Clause 10.3 - Professional time and expenses: If either (i) we are required by law, regulation, or a professional body of which we are a member; or (ii) you ask us and we agree to produce our working papers or our personnel as witnesses, you will reimburse us for our professional time and expenses, including legal costs. This clause will not apply (i) if you bring legal proceedings against us in relation to the services; or (ii) to a UK regulatory inspection or investigation of PwC.

Clause 10.5 - Parent entity auditors: Where we are auditors of a component, we have a professional responsibility to cooperate with your parent entity’s auditors and to provide them information and explanations as they may reasonably require for their audit. This could include our giving them access to our working papers and discussing relevant matters with them.

Clause 11.4 - Restrictions on employment: Independence rules impose restrictions on audit team members subsequently being employed by an audit client. You should be aware that employing an audit team member within a period of two years from the date of our auditors’ report, dependent upon their role and responsibilities, may represent a threat to our independence that is so significant that we may be required to resign our audit appointment. If you are considering employing an audit team member please request them to consult with our internal independence team to ascertain whether there are any restrictions arising from their role and responsibilities.

Clause 11.5 - Independence rules: Nothing in the agreement applies to the extent that it is prohibited by applicable independence rules.

Agreed amendments to the terms of business based on our engagement letter for the 2015/16 audit:

Clause 4.5 is amended to read: “We may invoice you on a monthly basis. All invoices are payable 30 days after the date on the invoice. If you do not pay an invoice within 30 days of the date of the invoice, we may charge you interest at the rate set by law.”

The definition of ‘confidential information’ in Clause 5 is defined as follows: “**Confidential information** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of either party, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential

Clause 10.1 is amended to read: “We may retain copies of all materials relevant to the services, including any materials given to us by you or on your behalf. All such materials retained by us will be treated as confidential information in accordance with clause 5.1.”

Clause 12.3 does not apply. Claims are dealt with in accordance with the Limitation Act 1980.



Appendix 2: Engagement letter (continued)

Clause 13.1 is amended to read: “Neither party shall be liable in respect of any breach of the agreement due to any cause beyond its reasonable control (a “Force Majeure Event”) including, but not limited to, Act of God, flood, lightning or fire; industrial action or lockouts; pandemic; the act or omission of Government, highway authorities or other competent authority; war, military operations or riot. A party affected by a Force Majeure Event shall inform the other party as soon as practicably possible of the circumstances involved and the likely timeframe for resolution. Should the Force Majeure Event not be resolved within thirty (30) days of notification, the other party shall be entitled to terminate the contract by notice in writing.”

Clause 13.4 is amended to read: “No party may transfer or deal with their rights or obligations under the agreement without prior written consent. Prior written consent will also be required should either party wish to novate the agreement to another transferee. In the event that consent is provided by you to novate the agreement, the novation will take effect on written notice from us so that (i) the transferee will be substituted for us with effect from the date specified in the notice and we will no longer have any rights and obligations under the agreement except in respect of the work performed prior to that date and (ii) the combined aggregate liability of us and the transferee will not exceed the limit of liability before the novation took place. We may also transfer or deal with our rights in any unpaid invoice without notice.”

The following additional clauses shall be added to the terms of business based on our engagement letter for the 2015/16 audit:

- 8.7 We agree to insure against death of or injury to persons arising directly out of this agreement pursuant thereto and against all actions, claims, demands, costs, charges and expenses in respect thereof.
- 8.8 In addition to the above indemnities and any insurance required by law, we shall maintain insurance in respect of the services as follows:
- 8.81 Public/third party liability insurance of no less than £10 million (ten million pounds) in value in respect of any single claim or series of claims made in respect of any incident.
 - 8.82 Employers liability insurance of no less than £5 million (five million pounds) in value in respect of any single claim or series of claims made in respect of any incident.
 - 8.83 Professional indemnity insurance of no less than £2 million (two million pounds) in value for any one occurrence.
- 8.9 We will supply to you on request confirmation from our insurers that cover is in place.
- 13.9 We acknowledge that you are subject to the powers of the Local Government Ombudsman (the “Ombudsman”) and have obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. We shall therefore comply with all requests made by you necessary (including but not limited to providing requested documentation and making staff available to be interviewed) to allow you to meet your legal obligations.
- 13.10 You may terminate this agreement and recover all your losses from us if we, our employees or anyone acting on our behalf do any of the following things:
- 13.10.1 Offer, give or agree to give to anyone any personal inducement or reward in respect of this or any other your agreements (even if we do not know what has been done); or
 - 13.10.2 Commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or
 - 13.10.3 Commit any fraud in connection with this or any other of your agreements whether alone or in conjunction with your members, contractors or employees.

Any clause limiting our liability shall not apply to this clause.



Appendix 2: Engagement letter (continued)

Additional provisions

Accessing our systems

You agree that our partners and employees may access our network via your internet connection using our computers. We each accept the risks and neither of us will have any liability whatsoever to the other in this regard.

Confirmation of agreement

Please confirm your acceptance of the agreement by signing the enclosed copy and returning it to us. If you wish to discuss the terms of our appointment further before replying, please let us know.

It is recommended that the agreement is read by those charged with governance to assist their understanding of the auditors' responsibilities, required communications made by and to the auditors and the scope of the audit.

Yours faithfully

Alison Breadon

For and on behalf of PricewaterhouseCoopers LLP

Copy letter to be returned to PricewaterhouseCoopers LLP

I accept the terms of the agreement and confirm that I am authorised to sign for and on behalf of Eastern Shires Purchasing Organisation.

.....
Signed

.....
Name and Position *Clive P.H. AD Finance*

.....
Date *14/2/17*

Appendix 2: Engagement letter (continued)



Schedule 1 – Provision of audit services relating to your non-statutory financial statements

This schedule sets out the scope of the specific audit services that we will provide under our engagement letter dated 14 February 2017. Any terms contained within this schedule apply only to the services specified in this schedule.

Scope of our audit

We will conduct our audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board (“APB”) (“ISAs (UK&I)”) and ethical requirements. An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of whether the accounting policies are appropriate to the company’s circumstances and have been consistently applied and adequately disclosed, the reasonableness of significant accounting estimates made by the directors, and the overall presentation of the financial statements.

In making our risk assessments, we consider internal control relevant to the company’s preparation of the financial statements in order to design audit procedures that are appropriate to the circumstances. We will not consider the company’s internal control for the purpose of expressing an opinion on its effectiveness.

For the avoidance of doubt, we will not assess or otherwise report in connection with other aspects of reporting, as previously required by the Audit Commission, such as reporting on arrangements for securing economy, efficiency and effectiveness in the use of resources.

Internal audit

In developing our audit plan, we will liaise with your internal auditors as appropriate to ensure that our work is properly coordinated with their work. While we will use your internal auditors’ work whenever possible, ISA (UK&I) 610 ‘Using the work of internal auditors’ states that we are solely responsible for the audit opinions expressed and our responsibility is not reduced by our use of the internal auditors’ work.

In assessing the extent to which we can use your internal auditors’ work we will evaluate its adequacy for the external audit process in accordance with ISA (UK&I) 610. We will assess the procedures performed and related documentation for compliance with ISAs (UK&I) and will be required to evaluate and perform audit procedures on selected internal audit work.

Detection of fraud, error and non-compliance

As set out in Appendix 1 of ISA (UK&I) 210 ‘Agreeing the terms of audit engagements’, because of the inherent limitations of an audit and internal control there is an unavoidable risk that some material misstatements in the financial statements (including those resulting from fraud, error or non-compliance with law or regulations) may not be detected, even though the audit is properly planned and performed in accordance with ISAs (UK&I).

Appendix 2: Engagement letter (continued)



Preparation of financial statements

These services do not include assistance with the preparation of your financial statements, but we shall discuss the company's accounting policies with you, particularly in any problem areas, and we may propose adjusting entries for your consideration.

Assets owned by third parties

Our audit procedures will not normally extend to assets or documents of title in respect of assets that are in your possession but owned by others.

Auditors' report

Our professional responsibilities

We will report to the directors on the truth and fairness of the company's state of affairs and profit or loss and, when applicable, the cash flows, in accordance with IFRSs as adopted by the European Union.

Additional responsibilities in respect of the financial statements

We may also be required by ISAs (UK&I) to report other matters in our auditors' report; for example, if the other information that, in our judgment, is apparently materially incorrect based on, or materially inconsistent with, the knowledge acquired by us in the course of performing the audit.

Form and content of our auditors' report

We refer you to the attached draft report for the expected form and content of our auditors' report. The form and content may need to be amended in the light of our audit findings.

Purpose of our auditors' report

Our auditors' report, including our opinions, will be addressed to and prepared solely for the benefit of the directors as a body, for the purpose, and is not for the use or benefit of any other party. We will not in giving our audit opinions, accept liability or assume responsibility for any other purpose or to any other person who receives our report.

Appendix 2: Engagement letter (continued)



Communications with those charged with governance

Our audit is not designed to identify all deficiencies in the company's accounting and internal control systems but we shall report to those charged with governance, in writing, significant deficiencies in internal control identified during the audit that we consider should be brought to their attention.

We shall also communicate to those charged with governance significant findings arising from our audit as appropriate.

Our report(s) on these matters must not be provided to anyone else without our prior written consent, which will be granted only on the basis that such report(s) are not prepared with the interests of anyone other than the company in mind and that we accept no duty or responsibility to anyone else.

Your responsibilities

As directors, you understand and acknowledge your responsibility for:

- safeguarding the assets of the company and preventing and detecting fraud, error and non-compliance with law or regulations;
- ensuring that the company maintains accounting records which disclose with reasonable accuracy, at any time, its financial position;
- such internal control as you determine necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error; and
- preparing financial statements which give a true and fair view of the company's state of affairs and profit or loss and, when applicable, the cash flows, in accordance with IFRSs as adopted by the European Union.

You also understand and acknowledge your responsibility for providing us with:

- access to all information of which management is aware that is relevant to the preparation of the financial statements such as accounting records, and all other relevant records and documentation (including minutes of all directors, management and members' meetings);
- additional information that we may request from you for the purpose of the audit; and
- unrestricted access to persons within the company from whom we determine it necessary to obtain audit evidence.

You are solely responsible for determining whether the basis of preparation of the financial statements is appropriate for the purpose stated above. We will not comment on or otherwise consider the appropriateness of the basis of preparation.

In order to evidence that you formally take responsibility for and approve the financial statements you will either include a separate directors' statement to that effect or sign the financial statements, before we sign our auditors' report.

Appendix 2: Engagement letter (continued)



Management representations

The information used to prepare the financial statements will invariably include facts or judgements which are not themselves recorded in the accounting records. As part of our normal audit procedures we shall request those charged with governance to provide written confirmation of such facts or judgements and any other oral representations that we have received during the audit about matters materially affecting the financial statements.

We will also ask them to confirm in that letter that all important and relevant information has been brought to our attention.

We shall provide those charged with governance a schedule of any uncorrected misstatements that have come to our attention during our audit. If they decide not to adjust the financial statements for these misstatements, we shall request a written representation from both management and the directors stating their reasons for not correcting the misstatements and that they believe the effects of these uncorrected misstatements are immaterial, individually and in aggregate, to the financial statements as a whole.

In connection with representations and the supply of information to us generally, you agree to include within the financial statements a statement to the effect that, in the case of each of the persons who are directors at the time when the directors' statement is approved:

- so far as the director is aware, there is no relevant audit information of which we are unaware; and
- each director has taken all the steps that he/she ought to have taken as a director in order to make him/herself aware of any relevant audit information and to establish that we are aware of that information.

Other requirements of the directors

Surrounding information

To help us check the consistency of documents or statements to be issued with the financial statements with those financial statements and the knowledge acquired from our audit, you agree to provide us with all such documents or statements in a timely manner.

Subsequent events

Once we have issued our auditors' report we have no further obligation to perform any audit procedures in relation to the financial statements for that financial year. However, in accordance with ISA (UK&I) 560 'Subsequent events', if afterwards we become aware of a fact that may have caused us to amend our auditors' report had we known it before we signed it, we shall discuss the matter with management and consider whether the financial statements need revision. We expect that you will inform us of any material event occurring after the date of our auditors' report which may affect the financial statements.

Appendix 2: Engagement letter (continued)



Foreign regulations

If a company offers its securities or provides financial information to a regulator or government in a country outside the UK, regulations in that country may require that company's auditors to be registered locally. Not complying with these regulations can have severe consequences for both you and us. Accordingly, you agree to notify us of

- any existing or planned offering of securities outside the UK; and
- any provision or intention to provide audited financial statements to a regulator or government outside the UK in connection with your access to the capital markets of a country outside the UK, regardless of whether you include our auditors' report or refer to us or our report.

Independence

Compliance with the auditor independence rules is a shared responsibility between a company and its independent auditor. Because the independence rules encompass not only the company but also its subsidiaries, joint ventures and associates (as defined in IFRSs as adopted by the European Union/UK GAAP), you agree to inform Alison Breadon periodically about the identity of each subsidiary, joint venture and associate and will notify Alison Breadon in advance regarding any expected changes to them, including, but not limited to, changes in ownership or control and new acquisitions or significant investments. You acknowledge that we will use this information confidentially to assess and/or reassess independence.



Appendix 2: Engagement letter (continued)

Proposed form of auditors' report

INDEPENDENT AUDITORS' REPORT TO THE MEMBERS OF THE EASTERN SHIRES PURCHASING ORGANISATION MANAGEMENT COMMITTEE

We have audited the non-statutory financial statements of Eastern Shires Purchasing Organisation for the year ended 31 March 2017 which comprise the Balance Sheet, the Comprehensive Income and Expenditure Statement, the Cash Flow Statement, the Movement in Reserves Statement and the related notes. The financial reporting framework that has been applied in the preparation of these non-statutory financial statements is the Code of Practice on Local Authority Accounting in the United Kingdom 2016/17.

Respective responsibilities of the Consortium Treasurer and auditors

As explained more fully in the Consortium Treasurer's Responsibilities and the Eastern Shires Purchasing Organisation Consortium's Responsibilities [set out on pages...], the Consortium Treasurer is responsible for the preparation of the non-statutory financial statements and for being satisfied that they give a true and fair view. Our responsibility is to audit and express an opinion on the non-statutory financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require us to comply with the Auditing Practices Board's Ethical Standards for Auditors.

This report, including the opinion, has been prepared for and only for the members for management purposes in accordance with our engagement letter dated 14 February 2017 and for no other purpose. We do not, in giving this opinion, accept or assume responsibility for any other purpose or to any other person to whom this report is shown or into whose hands it may come including without limitation under any contractual obligations of the company, save where expressly agreed by our prior consent in writing.

Scope of the audit of the non-statutory financial statements

An audit involves obtaining evidence about the amounts and disclosures in the non-statutory financial statements sufficient to give reasonable assurance that the non-statutory financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the organisation's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the directors; and the overall presentation of the non-statutory financial statements. In addition, we read all the financial and non-financial information in the annual report to identify material inconsistencies with the audited non-statutory financial statements. If we become aware of any apparent material misstatements or inconsistencies we consider the implications for our report.

Opinion on non-statutory financial statements

In our opinion the non-statutory financial statements:

- give a true and fair view of the state of the organisation's affairs as at 31 March 2017 and of its profit and cash flows for the year then ended; and
- have been properly prepared in accordance with the Code of Practice on Local Authority Accounting in the United Kingdom 2016/17.

This document has been prepared only for Eastern Shires Purchasing Organisation and solely for the purpose and on the terms agreed with Eastern Shires Purchasing Organisation in our agreement dated 14 February 2017. We accept no liability (including for negligence) to anyone else in connection with this document, and it may not be provided to anyone else.

© 2017 PricewaterhouseCoopers LLP. All rights reserved. In this document, "PwC" refers to the UK member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details..

160504-140650-IM-OS

This page is intentionally left blank



ESPO MANAGEMENT COMMITTEE – 28 FEBRUARY 2017

AGENDA ITEM NO

REPORT OF THE CONSORTIUM TREASURER

THE INTERNAL AUDIT CHARTER FOR ESPO

Purpose of Report

1. The purpose of this report is for the Committee to: -
 - a. Review and note additions to the Public Sector Internal Audit Standards (the PSIAS)
 - b. Approve the revised Internal Audit Charter for ESPO containing the aforementioned additions

Background

2. The 'Relevant Internal Audit Standard Setters' (RIASS) in the UK (for which CIPFA represents local government), adopted from 1 April 2013 a common set of Public Sector Internal Audit Standards (the PSIAS). The PSIAS encompass the mandatory elements of the Global Institute of Internal Auditors (IIA Global) International Professional Practices Framework (IPPF).
3. Additional requirements and interpretations for the UK public sector are inserted into the PSIAS. A Local Government Application Note (LGAN) developed by CIPFA guides the Head of Assurance Services when undertaking the role of Head of Internal Audit Service (HoIAS) in consistently applying the PSIAS.
4. The revised Accounts and Audit Regulations (2015) now reflect the PSIAS by stating that, '*A relevant local authority must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes taking into account public sector internal auditing standards or guidance*'.
5. Following changes to the IPPF in 2015, two additions to the PSIAS were adopted from 1 April 2016, namely the Mission of Internal Audit and Core Principles for the Professional Practice of Internal Auditing.

6. The PSIAS require that the purpose, authority, and responsibility of the internal audit activity must be formally defined in an internal audit charter (the Charter), and the HoIAS must periodically review the Charter and have it approved.

Additions to the PSIAS 2016

7. The Mission of Internal Audit articulates what the internal audit activity aspires to accomplish within an organisation. Its place in the IPPF is deliberate, demonstrating how practitioners should leverage the entire framework to facilitate their ability to achieve the Mission. The PSIAS define the Mission of internal audit as, *'To enhance and protect organisational value by providing risk-based and objective assurance, advice and insight'*.
8. The Core Principles, taken as whole, point to an effective internal audit function i.e. what 'good' internal audit looks like. The Principles are: -
- Demonstrates integrity.
 - Demonstrates competence and due professional care.
 - Is objective and free from undue influence (independent).
 - Aligns with the strategies, objectives, and risks of the organisation.
 - Is appropriately positioned and adequately resourced.
 - Demonstrates quality and continuous improvement.
 - Communicates effectively.
 - Provides risk-based assurance.
 - Is insightful, proactive, and future-focused.
 - Promotes organisational improvement.
9. The HoIAS is confident that both the Mission of Internal Audit and the Core Principles align to the current approach to providing the internal audit function at ESPO. Nevertheless, the LGAN will be revised to provide additional guidance and examples of how achievement can be demonstrated, but this is not likely to be issued until April 2017.
10. Further changes to the IPPF were implemented in January 2017 and they will be reflected in a further update to the PSIAS later in that year.

The Internal Audit Charter for ESPO

11. The PSIAS mandate that the purpose, authority and responsibility of the internal audit activity must be formally defined in an internal audit charter (the Charter). Leicestershire County Council is the appointed Servicing Authority for ESPO, and is responsible for performing the functions set out in Schedule 3 of the Consortium Agreement, including under 'Support Services' the provision of internal audit service.

12. The Charter establishes Leicestershire County Council's Internal Audit Service (LCCIAS) position with ESPO and the associated governance arrangements, including the nature of the HoIAS' functional reporting relationship with the Finance and Audit Subcommittee (the Subcommittee) and Management Committee (the Committee); authorises access to records, personnel and physical properties relevant to the performance of engagements; and defines the scope of internal audit activities.
13. Common terms found throughout the PSIAS need to be interpreted in the context of differing governance arrangements at each organisation. For ESPO, the following terms are interpreted as: -
 - a. 'Chief Audit Executive' - Leicestershire County Council's Head of Internal Audit Service (HoIAS);
 - b. 'Board' - the Finance and Audit Subcommittee (the Subcommittee). However, since the Subcommittee does not have any decision making authority, the Charter has to be approved by Management Committee;
 - c. 'Senior Management' - the Director of ESPO, the Consortium Secretary and the Consortium Treasurer i.e. the three Officers with delegated functions within the Consortium Agreement collectively known as (the Officers).
14. Providing a formal, written Charter is important to managing the provision of internal audit activity by LCCIAS. The Charter provides a recognised statement for review and acceptance by the Officers and for the Subcommittee to recommend, as documented in formal minutes, final approval by the Management Committee.
15. A Charter also facilitates a periodic assessment by the HoIAS of the adequacy of the internal audit activity's purpose, authority, and responsibility, which establishes the role of LCCIAS and whether it continues to be adequate to enable it to accomplish its objectives. If a question should arise, the Charter provides a formal, written protocol agreed with the Officers and the Subcommittee and Management Committee, about ESPO's internal audit activity.
16. The PSIAS mandate that the Internal Audit Charter for ESPO should: -
 - a. recognise the mandatory nature of the PSIAS
 - b. define the scope of internal audit activities recognising that internal audit's remit extends to the organisation's entire control environment not just financial controls
 - c. establish internal audit's responsibilities, objectives & organisational independence
 - d. establish accountability, reporting lines and relationships between the leader of the internal audit activity and those to whom they report functionally and administratively
 - e. set out the arrangements that exist within the organisation's anti-fraud and anti-corruption policies

- f. establish internal audit's right of access to all records, assets, personnel and premises and its authority to obtain such information and explanations as it considers necessary to fulfil its responsibilities

Additional public sector requirements also specify that the Charter must: -

- g. define the terms 'board' & 'senior management' in relation to internal audit activity
- h. cover the arrangements for appropriate resourcing
- i. define the role of internal audit in any fraud-related work
- j. include arrangements for avoiding conflicts of interest if non audit activities are undertaken

17. In this first revision of the Charter, the HoIAS has taken account of the additional requirements of the PSIAS and amendments to the Accounts and Audit Regulations (2015). The revised Charter has 8 distinct sections: -

Section Content

| | |
|---|----------------------------------------------------------------------|
| 1 | Introduction |
| 2 | Mission of Internal Audit (new) |
| 3 | Purpose (PSIAS definition of the internal audit activity) |
| 4 | The Core Principles (new) |
| 5 | Definitions (including the Board and Senior Management) |
| 6 | Authority (afforded to the internal audit activity) (updated) |
| 7 | Responsibility (of the Committee, CMT and the HoIAS) |
| 8 | The scope of the internal audit activity |

18. The HoIAS has interpreted that many of the detailed PSIAS requirements merely reinforce practices and procedures that are already firmly embedded in LCCIAS' approaches to internal audit activity. Those intricate details are not repeated in the Charter but new requirements, extensions and variations are explained.
19. At its meeting on 7 February 2017, the Finance and Audit Subcommittee reviewed the Internal Audit Charter for ESPO and recommended that it is approved by Management Committee
20. The revised Internal Audit Charter for ESPO is included as Appendix 1.

Resource Implications

21. The determination of resource to undertake internal audit activity is referred to at various points throughout the Charter

Equal Opportunities Implications

22. There are no discernible equal opportunities implications resulting from the audits listed.

Recommendations

23. That the Committee: -
- a. reviews the revised Charter and notes the report
 - b. approves the revised Charter.

Background Papers

Report to ESPO Finance and Audit Subcommittee 9 June 2016 – Annual Internal Audit Plan

Report to ESPO Finance and Audit Subcommittee 7 February 2017 – The Internal Audit Charter

Officer to Contact

Neil Jones, Head of Internal Audit Service

Tel: 0116 305 7629

Email: neil.jones@leics.gov.uk

Appendices

Appendix 1 – The revised Internal Audit Charter for ESPO

This page is intentionally left blank

The Internal Audit Charter for ESPO : Contents

| Section | Page |
|------------------------------------------------------------------------------|-------------|
| 1. Introduction | 2 |
| 2. The Mission of Internal Audit | 2 |
| 3. Purpose | 2 |
| 4. Core Principles for the Professional Practice of Internal Auditing | 3 |
| 5. Definitions | 3 |
| Independence | 3 |
| Objectivity | 3 |
| Assurance activity | 4 |
| Consulting activity | 4 |
| The Chief Audit Executive | 5 |
| The Board | 5 |
| Senior Management | 5 |
| 6. Authority | 6 |
| Statutory and Professional Requirements for internal audit activity | 6 |
| Access | 7 |
| Organisational independence | 7 |
| 7. Responsibility | 8 |
| The Subcommittee's responsibilities | 8 |
| The Officers' responsibilities | 8 |
| The HoIAS' responsibilities; | 9 |
| ➤ Code of Ethics | 8 |
| ➤ International Standards for the Professional Practice of Internal Auditing | 9 |
| ➤ Attribute standards | 9 |
| ➤ Performance standards | 10 |
| 8. The Scope of Internal Audit Activity | 12 |
| The role of internal audit in fraud and corruption | 12 |

Introduction

1. Introduction

- 1.1. The Public Sector Internal Audit Standards (the PSIAS), provide a consolidated approach to the function of internal auditing across the whole of the public sector enabling continuity, sound corporate governance and transparency. The PSIAS encompass the mandatory elements of the Global Institute of Internal Auditors (IIA) standards, and also additional requirements and interpretations for the UK public sector. The PSIAS were revised from 1st April 2016. A Local Government Application Note (LGAN) developed by CIPFA provides practical guidance on how to apply the PSIAS.
- 1.2. The PSIAS mandate that the purpose, authority, and responsibility of the internal audit activity must be formally defined in an internal audit charter (the Charter), consistent with the Mission of Internal Audit and the mandatory elements of the International Professional Practices Framework (the Core Principles for the Professional Practice of Internal Auditing, the Code of Ethics, the Standards, and the Definition of Internal Auditing). The chief audit executive (the term is explained at 5.10 below) must periodically review the Charter and present it to senior management and the board for approval. Responsibility for, and ownership of, the Charter remains with the organisation and final approval of the Charter resides with the Board (the term is explained in 5.12 and 5.13 below).

2. The Mission of Internal Audit

- 2.1. *To enhance and protect organisational value by providing risk-based and objective assurance, advice and insight.*

3. Purpose

- 3.1. The purpose of the internal audit activity is explained by the PSIAS Definition of Internal Auditing: -

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.

- 3.2. The LGAN further explains that *'the organisation (ESPO's management) is responsible for establishing and maintaining appropriate risk management processes, control systems, accounting records and governance arrangements (known as the control environment). Internal audit plays a vital part in advising the organisation that these arrangements are in place and operating properly. The annual internal audit opinion, which informs the governance statement, both emphasises and reflects the importance of this aspect of internal audit work.*

The organisation's response to internal audit activity should lead to the strengthening of the control environment and, therefore, contribute to the achievement of the organisation's objectives.

3.3. Leicestershire County Council Internal Audit Service (LCCIAS) has adopted the PSIAS definition of internal auditing.

4. Core Principles for the Professional Practice of Internal Auditing

4.1. The Core Principles, taken as whole, articulate internal audit effectiveness.

4.2. For an internal audit function to be considered effective, all Principles should be present and operating effectively. The Head of Assurance Services acting in the role of the role of Head of Internal Audit Service (HoIAS) is responsible for ensuring that internal auditors, as well as the internal audit activity, demonstrate achievement of the Core Principles.

4.3. The Core Principles are: -

- a. Demonstrates integrity.
- b. Demonstrates competence and due professional care.
- c. Is objective and free from undue influence (independent).
- d. Aligns with the strategies, objectives, and risks of the organisation.
- e. Is appropriately positioned and adequately resourced.
- f. Demonstrates quality and continuous improvement.
- g. Communicates effectively.
- h. Provides risk-based assurance.
- i. Is insightful, proactive, and future-focused.
- j. Promotes organisational improvement.

5. Definitions

Independence

5.1. The PSIAS define independence as *'the freedom from conditions that threaten the ability of the internal audit activity to carry out internal audit responsibilities in an unbiased manner. To achieve the degree of independence necessary to effectively carry out the responsibilities of the internal audit activity requires the head of the activity to have direct and unrestricted access to senior management and the board. This can be achieved through a dual-reporting relationship. Threats to independence must be managed at the individual auditor, engagement, functional and organisational levels'*.

Objectivity

5.2. The PSIAS define objectivity as *'an unbiased mental attitude that allows internal auditors to perform engagements in such a manner that they believe in their work product and that no quality compromises are made.'*

Objectivity requires that internal auditors do not subordinate their judgment on audit matters to others. Threats to objectivity must be managed at the individual auditor, engagement, functional and organisational levels’.

Assurance activity

- 5.3. This is defined in the PSIAS as *‘An objective examination of evidence for the purpose of providing an independent assessment on governance, risk management and control processes for the organisation. Examples may include financial, performance, compliance, system security and due diligence engagements’.*
- 5.4. LCCIAS conducts a wide range of engagements (assignments) designed to evaluate the quality of risk management processes, systems of internal control and corporate governance processes, across all aspects of ESPO’s control environment (including where it works in partnership with, and leads on behalf of others).
- 5.5. LCCIAS aims to co-ordinate its assurance activity with any other identified internal and external providers of assurance services to ensure sufficient and proper coverage over the control environment and minimise duplication of efforts.

Consulting activity

- 5.6. This is defined in the PSIAS as *‘Advisory and related client service activities, the nature and scope of which are agreed with the client, are intended to add value and improve an organisation’s governance, risk management and control processes without the internal auditor assuming management responsibility’.*
- 5.7. LCCIAS often acts in a consulting role and provides support for improvement in ESPO’s systems, procedures and control processes without assuming management responsibility. Examples include advice, commentary on management’s intended control design and framework and potential implications of changes to systems, processes and policies. The provision of such advice does not prejudice LCCIAS’ right to evaluate the established systems and controls at a later date. Other consulting could include counsel, facilitation and training.
- 5.8. There is a specific public sector requirement that *‘Approval must be sought from the Board (see paragraphs 3.12 to 3.14 below) for any significant additional consulting services not already included in the audit plan, prior to accepting the engagement.* This is to ensure an appropriate balance of assurance (the primary internal audit function) and consulting activity.
- 5.9. The combined results and outcomes of assurance and consulting activities are fundamental to determining the annual internal audit opinion on the overall adequacy and effectiveness of ESPO’s control environment.

The Chief Audit Executive

- 5.10. Although the PSIAS and LGAN have both adopted the original IIA Standards term 'Chief Audit Executive', it is recognised that this only describes a role, which at the Council (the Servicing Authority for ESPO) is performed by the Head of Assurance Services in his capacity of Head of Internal Audit Service (HoIAS). Within this Charter, all references from hereon are to the HoIAS.

The Board and Senior Management

- 5.11. A public sector requirement of the PSIAS is for the Charter to define the terms 'Board' and 'Senior Management' for the purposes of internal audit activity. The LGAN advises the terms must be interpreted in the context of the governance arrangements within each individual organisation.

The Board

- 5.12. The PSIAS define the Board as *'The highest level of governing body charged with the responsibility to direct and/or oversee the activities and management of the organisation. This includes a supervisory board or a board of governors or trustees... 'Board' may refer to an audit committee to which the governing body has delegated certain functions.'*
- 5.13. For ESPO, the Terms of Reference for the Finance and Audit Subcommittee (the Subcommittee) include a delegated function to, *'Receive and review audit and governance reports'*.
- 5.14. Consequently, at ESPO the Finance and Audit Subcommittee (the Subcommittee) will perform the function of the Board. Within this Charter, all references from hereon are to the Subcommittee. Section 7.1 explains the Subcommittee's relationship with the Management Committee.

Senior Management

- 5.15. There is not a specific definition of 'senior management' in either the PSIAS or the LGAN. However, the PSIAS require *'the HoIAS to establish risk-based plans to determine the priorities of the internal audit activity, consistent with the organisation's goals'*, and the LGAN advises that *'an effective internal audit service should understand the whole organisation, its needs and objectives'*.
- 5.16. In order to fully understand and be able to fulfill its responsibilities, the HoIAS and his/her team requires unfettered access to not only the Director of ESPO (the Director) but also, given the role of the Servicing Authority, to both the Consortium Secretary (the Secretary) and Consortium Treasurer (the Treasurer).

5.17. Consequently, at ESPO, the three roles of Director, Secretary and Treasurer (collectively referred to as the Delegated Officers (the Officers) will perform the functions of Senior Management. Within this Charter, all references from hereon are to the Officers.

6. Authority

Statutory and Professional Requirements for internal audit activity

- 6.1. ESPO is a local authority purchasing consortium made up of six local authorities for which the Council is the Servicing Authority. The Accounts and Audit Regulations 2015 (the Regulations), require that *'A relevant authority must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance'*.
- 6.2. Section 151 of the Local Government Act 1972, states that every local authority should *'make arrangements for the proper administration of their financial affairs, and shall secure that one of their officers has responsibility for the administration of those affairs'*. CIPFA defines that *'proper administration'* should include *'compliance with the statutory requirements for accounting and internal audit'*. ESPO's Constitution (Financial Regulation Rule 15(a)) determines that *'Responsibility for arranging a continuous internal audit of the ESPO's financial management arrangements will be delegated by the Management Committee to the Consortium Treasurer'*.
- 6.3. The relationship between the head of the internal audit activity, namely the HoIAS, and the Treasurer (the Chief Financial Officer (CFO) of the Council) is of particular importance in local government. The CIPFA Statement on the Role of the CFO in Local Government states that the CFO must: -
- a. *ensure an effective internal audit function is resourced and maintained*
 - b. *ensure that the authority has put in place effective arrangements for internal audit of the control environment*
 - c. *support the authority's internal audit arrangements*
 - d. *ensure that the audit committee receives the necessary advice and information, so that both functions can operate effectively*
- 6.4. At ESPO, the Treasurer: -
- a. In conjunction with the Director and the Secretary contributes to and agrees the overall annual internal audit plan
 - b. In conjunction with the Director receives periodic updates on progress and performance against the plan and approves major variations before they are reported to the Committee
 - c. commissions (or approves) unplanned audits
 - d. is the HoIAS' line manager and conducts his/her annual performance and development review;
 - e. In conjunction with the Director determines LCCIAS resources required for ESPO.

Access

- 6.5. PSIAS 1000 requires the Charter to, *'establish internal audit's right of access to all records, assets, personnel and premises, including those of partner organisations where appropriate, and its authority to obtain such information and explanations as it considers necessary to fulfil its responsibilities'*.
- 6.6. ESPO's Constitution Financial Regulations Rule 15(b) states that the Treasurer or an authorised representative (interpreted to be any LCCIAS internal auditors) has authority to:-
- a. enter any ESPO building or land at all reasonable times;
 - b. have access to all records, documents and correspondence relating to any transactions of ESPO;
 - c. receive such explanations as he or she considers necessary on any matter under examination;
 - d. require any employee of ESPO to produce cash, stores or any other ESPO property under his/her her control.
- 6.7. Whilst not explicit, Rule 15(b) is a conduit to seeking agreement to access any relevant partner organisations' records.

Organisational independence

- 6.8. The PSIAS require that *'reporting and management arrangements must be put in place that preserves the HoIAS (and LCCIAS') independence and objectivity, in particular with regard to the principle that they must remain independent of the audited activities'*.
This requirement aligns to CIPFA's Statement on the Role of the Head of Internal Audit (2010) that *'organisations need to ensure that where the HoIAS is an employee, he or she is 'sufficiently senior and independent within the organisation's structure to allow them to carry out their role effectively and be able to provide credibly constructive challenge to the Management Team'*.
- 6.9. PSIAS 1110 on Organisational Independence states that *'the HoIAS (HoIAS) must report to a level within the organisation that allows the internal audit activity to fulfil its responsibilities. The HoIAS must confirm to the Subcommittee, at least annually, the organisational independence of the internal audit activity'*. An additional public sector requirement of PSIAS 1110 is that *'The HoIAS must also establish effective communication with, and have free and unfettered access to, the chief executive (or equivalent) and the chair of the audit committee'*.
- 6.10. The HoIAS reports to the Treasurer and to the Subcommittee (reports are agreed with the Director beforehand). The HoIAS has direct access to ESPO's organisational management team, the Secretary and, if required, to the Chair of the Subcommittee.

In accordance with PSIAS 1110A.1, there is acknowledgement amongst these parties that the internal audit activity must be free from interference in determining the scope of internal auditing, performing work and communicating results.

7. Responsibility

This section of the Charter summarises the key responsibilities of the Subcommittee, the Officers and the HoIAS and LCCIAS internal auditors

The Subcommittee's responsibilities

7.1. The Subcommittee does not have any decision making authority. Instead, the Management Committee has overall strategic responsibility for the management oversight and direction of ESPO, and it is the sole decision maker. As such, the Subcommittee will undertake the following key duties within the PSIAS which will then have to be formally approved by the Management Committee, namely review and note: -

- a. the internal audit charter
- b. the risk based internal audit plan
- c. communications from the HoIAS on internal audit performance relative to its plan and other matters
- d. an annual confirmation from the HoIAS with regard to the organisational independence of the internal audit activity
- e. the HoIAS' annual report, including the opinion on the control environment, a statement on conformance to the PSIAS and the results of the Quality Assurance and Improvement Programme – QAIP (see 5.4a)
- f. whether there are inappropriate scope or resource limitations, determined by making appropriate enquiries of the Officers and the HoIAS.

The Officers' responsibilities

7.2. The effectiveness of the internal audit activity relies upon the full co-operation of Senior Management. Under this Charter, the Officers will co-operate with the HOIAS in the following: -

- a. providing input to the annual risk based internal audit plan
- b. agreeing Terms of Engagement within agreed timescales
- c. sponsoring each audit at Assistant Director level
- d. providing LCCIAS with full support and co-operation including access to relevant records and personnel
- e. responding to LCCIAS reports within agreed timescales;
- f. ensuring that agreed recommendations are implemented within timescales;
- g. providing assurance that management actions have been implemented
- h. notifying the Treasurer of any significant changes in the control environment and proposed changes and developments in systems;

- i. notifying the Treasurer and Secretary of all suspected or detected fraud, corruption or impropriety.

The HoIAS' responsibilities

Code of Ethics

7.3. The HoIAS must ensure that LCCIAS internal auditors conform to the Code of Ethics (the Code), which promotes an ethical and professional culture and comprises both principles that are relevant to the profession and practice of internal auditing, and rules of conduct that describe behaviour norms and guide the ethical conduct expected of internal auditors. The Code does not supersede or replace either individuals' own professional bodies' codes of ethics or those of the Council (LCCIAS' employer). A PSIAS public sector requirement is that LCCIAS internal auditors must have regard to the Committee on Standards in Public Life's 'Seven Principles of Public Life'.

International Standards for the Professional Practice of Internal Auditing

7.4. The HoIAS must ensure that there is a robust framework supporting the activity of internal audit and that LCCIAS' internal auditors are trained and guided, and their performance monitored, to ensure they conform to the detailed attribute and performance standards within the PSIAS.

7.5. LCCIAS will conform to the full range of the standards. Nevertheless, the HoIAS has interpreted that many of the detailed PSIAS requirements for planning, performing, communicating results and monitoring progress merely reinforce practices and procedures that are already firmly embedded in LCCIAS' approach to internal audit activity and so those details are not repeated in this Charter. Only new requirements, extensions and variations are explained in more detail below: -

Attribute standards

- a. 1300 - The HoIAS must develop and maintain a quality assurance and improvement programme (QAIP) that covers all aspects of the internal audit activity. This is a new requirement for LCCIAS.

The QAIP should enable: -

- evaluations of LCCIAS' conformance with the Definition of Internal Auditing and the Standards
- internal auditors' compliance with the Code of Ethics
- assessment of the efficiency and effectiveness of the internal audit activity
- the identification of opportunities for improvement.

The QAIP must plan for both internal and external assessments and the latter must be conducted at least once every five years by a qualified, independent assessor or assessment team from outside the organisation.

To avoid any duplication and unnecessary cost, the HoIAS would discuss with and gain agreement from the Council's 'Board' (Corporate Governance Committee) to both the form of external assessments and the qualifications and independence of the external assessor or assessment team, including any potential conflict of interest. There are two additional public sector requirements: -

- the HoIAS must agree the scope of external assessments with an appropriate sponsor, e.g. the Council's CFO (the Consortium Treasurer) as well as with the external assessor or assessment team
- The HoIAS must communicate the results of the QAIP and progress against any improvement plans, firstly to the Council's Senior Management Team and Board, and then to ESPO's equivalents. The results must be reported in the HoIAS' annual report (usually on the agenda for the June Committee). The HoIAS may state that LCCIAS conforms with the International Standards for the Professional Practice of Internal Auditing only if the results of the QAIP support this statement. When non-conformance with the Definition of Internal Auditing, the Code of Ethics or the Standards impacts the overall scope or operation of the internal audit activity, the HoIAS must disclose the non-conformance and the impact to the respective Senior Management Teams and Boards.
- An additional public sector requirement is that more significant deviations must be considered for inclusion in the governance statement.

Performance standards

- b. 2000 - The HoIAS must effectively manage the internal audit activity to ensure it adds value to the organisation. This sub-set of requirements includes the HoIAS' responsibility to establish risk-based plans to determine the priorities of the internal audit activity, consistent with the organisation's goals.

There is a revised requirement for the risk based plan to incorporate or be linked to a strategic or high-level statement of how the internal audit activity will be delivered and developed in accordance with the Charter and how it links to ESPO's objectives and priorities.

There are two additional public sector requirements: -

1. the risk-based plan must explain how LCCIAS' resource requirements have been assessed.

Where the HoIAS believes that the level of agreed resources will impact adversely on the provision of the annual internal audit opinion, the consequences must be brought to the attention of the Subcommittee

2. the HoIAS must include in the risk-based plan the approach to using other sources of assurance (e.g. the External Auditor or where ESPO is in partnership with another organisation) and any work required to place reliance upon those other sources.

Reporting to the Subcommittee on performance relative to the plan is well established. However PSIAS also requires periodically reporting to the Treasurer and the other two Officers and the Subcommittee on the internal audit activity's purpose, authority and responsibility.

- c. 2100 - The internal audit activity must evaluate and contribute to the improvement of governance, risk management and control processes using a systematic and disciplined approach. This sub-set formalises some of the work already undertaken by LCCIAS to assess and make appropriate recommendations for improving the governance process, but then requires specific coverage to ensure accomplishment of the following objectives: -
 - Promoting appropriate ethics and values within ESPO;
 - Ensuring effective organisational performance management and accountability;
 - Communicating risk and control information to appropriate areas of ESPO;
 - Coordinating the activities of and communicating information among the Subcommittee, external and internal auditors and management.

For risk management processes, there are requirements to evaluate risk exposures relating to ESPO's governance, operations and information systems and the potential for the occurrence of fraud and how ESPO manages fraud risk.

- d. 2400 – LCCIAS must communicate the results of engagements, including the engagement's objectives and scope as well as applicable conclusions, recommendations and action plans. The PSIAS is explicit that LCCIAS auditors may report that their engagements are "conducted in conformance with the International Standards for the Professional Practice of Internal Auditing", only if the results of the QAIP support the statement.

A specific public sector requirement formalises the HoIAS responsibility to deliver an annual internal audit opinion on the overall adequacy and effectiveness of ESPO's control environment contained within a report that can be used to inform the governance statement. A new requirement is for the HoIAS annual report to include a statement on conformance with the PSIAS and the results of the QAIP.

- e. 2600 - When the HoIAS concludes that ESPO's organisational management has accepted a level of risk that may be unacceptable and there is a danger that ESPO's objectives may not be achieved, the matter should be discussed with the Treasurer and/or the other two Officers. If the HoIAS determines that the matter has not been resolved, the HoIAS must communicate the matter to the Subcommittee.

8. The Scope of Internal Audit Activity

8.1. The Officers are responsible for establishing and maintaining appropriate governance, risk management and control arrangements (i.e. the control environment), for not only ESPO activities, but also for those provided in conjunction with, and/or on behalf of its partners. LCCIAS' remit extends to ESPO's entire control environment. However, limitations on internal audit resource requires the HoIAS to understand and take account of the position with respect to ESPO's other sources of assurance (internal and external) and plan internal audit work accordingly so that activity can be co-ordinated, ensuring proper coverage and minimising duplication of effort.

8.2. Internal audit activity for ESPO (and, where appropriate its partners) includes:

-
- providing assurance services i.e. reviewing, appraising and reporting on: -
 - the soundness, adequacy and application of governance processes, risk management frameworks and internal controls;
 - the extent to which assets are accounted for and safeguarded from losses of all kinds
 - the suitability and reliability of financial and other data developed;
 - reviewing compliance and conformance to rules, regulations, laws, codes of practice, guidelines and principles
 - the accuracy and completeness of grant claims
- providing consulting services;
- undertaking investigations, studies, reviews or assignments as directed (or approved) by the Officers;

The role of internal audit in fraud and corruption

8.3. The Officers are responsible for developing and maintaining a control environment that mitigates the risk of fraud and corruption

8.4. The HoIAS is responsible for reviewing and evaluating ESPO's approach to managing the risks of fraud, bribery and corruption. This includes: -

- Ensuring that strategies, policies and procedures are kept up to date and align with relevant codes of conduct
- Ensuring adherence to the CIPFA Code of Practice on Managing the Risk of Fraud and Corruption
- Assisting with developing training and guidance on fraud awareness
- Coordination of ESPO's involvement in national anti-fraud projects

8.5. LCCIAS does not have responsibility for the detection or prevention of fraud and corruption, but it considers those risks when undertaking its activities.

The independence of the internal audit activity leaves it well placed to undertake (or guide) any investigations that are required. The HoIAS will determine the level and scope of LCCIAS' involvement including delegating the investigation of specific allegations to ESPO itself following an assessment of risk and financial impact.

This page is intentionally left blank



MANAGEMENT COMMITTEE – 28 FEBRUARY 2017

PROPOSED CHANGES TO THE CONTRACT PROCEDURE RULES

REPORT OF THE DIRECTOR

Purpose of Report

1. The purpose of this report is to:
 - a. report on the operation of the Contract Procedure Rules between 1st July 2015 and 30 June 2016.
 - b. seek approval of the proposed amendments to the Contract Procedure Rules from 1 March 2017.

Background

2. Rule 8 (Annual Reporting) of ESPO's Contract Procedure Rules stipulates that the Director of ESPO, in consultation with the County Solicitor, shall at least once in each financial year submit a report to the Management Committee in relation to the operation of these Rules. This includes (amongst other things) details of the approved exceptions to these Rules and approved extensions to contract where this has not been 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.
3. Officers of Leicestershire County Council and ESPO work together on an annual basis to review the Contract Procedure Rules and agree on any draft revisions and amendments to be proposed for approval.

Approved Exceptions to the Rules

4. Between 1st July 2015 and 30th June 2016 six approved exceptions to the Contract Procedure Rules which were allowed for under Rule 5 have been recorded in the Exceptions Log maintained by the Director of ESPO. Details of the exceptions are set out at Appendix A of this report.
5. The reasons for the approved exceptions are that as part of the 2015 workplan (for the 2016 catalogue) various frameworks were renewed. Whilst the renewals resulted in awards for most of the requirements, in some cases it was not possible to make an award, so the requirement for these items was subject to competition a second time through RfQs.
6. Whilst the RfQs enabled awards to be made for some of these residual requirements, it was still not possible to award all of the requirements following the RfQs. This was due to:

- a. No bids received
- b. Non-compliant bid; it was a mandatory requirement of the RfQ that all items in the sub-lots had to be tendered for. Where suppliers were unable to bid against all items in a sub-lot, it was not possible to make an award
- c. Bids did not meet specification
- d. An incumbent supplier not bidding in some cases the alternatives offered by other suppliers would have resulted in a commercially unviable solution i.e. buying at a price exceeding the ESPO selling price (that is, sell at a loss).

Having subjected these requirements to competition on two separate occasions without being able to secure suitable sources of supply, an exception under Rule 5(b)(i) of ESPO's Contract Procedure Rules was sought to establish contracts by direct negotiation with fourteen suppliers for a total value of business of £82,500.

Approved Contract Extensions where no provision in the Contract

7. Between 1st July 2015 and 30th June 2016 there were no contract extensions approved where there was no provision in the Contract.

Proposed Revisions to the Rules

8. Since the comprehensive review of the Rules last year, with the exception of the inclusion of a new Rule regarding Counter Terrorism and Security (Rule 9A), only minor changes to the Rules are proposed to clarify their meaning.

The proposed revisions are to:

- a. Replace the designation of 'County Solicitor' with 'Director of Law and Governance' to reflect the change in role and responsibility;
 - b. Include a reference to the requirements of the Counter Terrorism and Security Act 2015;
9. The revisions have been reviewed by the Deputy Director of ESPO, Head of Procurement and Compliance, Commercial Solicitor and Practice Manager Procurement and Compliance.
 10. A copy of the draft revised Contract Procedure Rules is set out at Appendix B to this report.
 11. Should the Management Committee approve the draft revised Contract Procedure Rules they will be published on ESPO's intranet and internet sites and communicated to all relevant managers and staff within ESPO, including via newsletters and other appropriate communication channels.

Recommendations

12. It is recommended that:
- a. the contents of this report on the operation of the Contract Procedure Rules between 1st July 2015 and 31st June 2016 be noted;
 - b. the Management Committee approve the proposed amendments to the Contract Procedure Rules as set out in Appendix B to this report;

Equal and Human Rights Implications

13. The Rules ensure that all suppliers and potential suppliers receive equal treatment when bidding for contracts.

Background Papers

14. None.

Officer to Contact

John Doherty, Director, ESPO
j.doherty@espo.org 0116 2657931

Appendices

- Appendix A – ESPO Contract Procedure Rules Exceptions and Extensions July 2015 – June 2016
- Appendix B - Proposed amendments to ESPO Contract Procedure Rules from 1 March 2017
- Appendix C – draft revised ESPO Contract Procedure Rules from 1 March 2017

This page is intentionally left blank

Appendix A

Period 1st July 2015 to 30th June 2016

| ESPO CPR EXCEPTIONS AND REQUESTED CONTRACT EXTENSIONS (WHERE NO EXTENSION PERIOD REMAINS AND CONTRACT VALUE IS OVER £100K) | | | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|----------------------------------------------------|-----------------------------------|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Date request made and details | Date of referral and to whom | Contract Number and Title | Category Team | Exception or Extension | Approval Date and Comments |
| <p>30/06/16</p> <p>Having subjected the requirement to competition within the European Union on two separate occasions no suitable sources of supply had been secured for 10 sub lots. Value = £22k.</p> <p>Exception request made under Rule 5(b)(i) which provides authority to the Director of ESPO to agree exception where the estimated value of the proposed Contract is under £100,000.</p> | <p>30/06/16</p> <p>John Doherty, Director, ESPO</p> | <p>172RFQ0216-01</p> <p>Office Consumables</p> | <p>Catalogue Procurement Team</p> | <p>Exception</p> | <p>11/07/16</p> <p>Approved by John Doherty, Director, ESPO</p> <p>Authorised the exception for the reasons captured in the Report of the Director 'Proposed Changes to the Contract Procedure Rules'.</p> |
| <p>30/06/16</p> <p>Having subjected the requirement to competition within the European Union on two separate occasions no suitable sources of supply had been secured for 3 sub lots. Value = £23k.</p> <p>Exception request made under Rule 5(b)(i) which provides authority to the Director of ESPO to agree exception where the estimated value of the proposed Contract is under £100,000.</p> | <p>30/06/16</p> <p>John Doherty, Director, ESPO</p> | <p>172RFQ0216-02</p> <p>Stationery Perforators</p> | <p>Catalogue Procurement Team</p> | <p>Exception</p> | <p>11/07/16</p> <p>Approved by John Doherty, Director, ESPO</p> <p>Authorised the exception for the reasons captured in the Report of the Director 'Proposed Changes to the Contract Procedure Rules'.</p> |
| <p>30/06/16</p> <p>Having subjected the requirement to competition within the European Union on two separate occasions no suitable sources of supply had been secured for 5 sub lots. Value = £11k.</p> <p>Exception request made under Rule 5(b)(i) which provides authority to the Director of ESPO to agree exception where the estimated value of the proposed Contract is under £100,000.</p> | <p>30/06/16</p> <p>John Doherty, Director, ESPO</p> | <p>172RFQ0216-03</p> <p>Stationery Staplers</p> | <p>Catalogue Procurement Team</p> | <p>Exception</p> | <p>11/07/16</p> <p>Approved by John Doherty, Director, ESPO</p> <p>Authorised the exception for the reasons captured in the Report of the Director 'Proposed Changes to the Contract Procedure Rules'.</p> |
| <p>30/06/16</p> <p>Having subjected the requirement to competition within the European Union on two separate occasions no suitable sources of supply had been secured for 2 sub lots. Value = £15k.</p> <p>Exception request made under Rule 5(b)(i) which provides authority to the Director of ESPO to agree exception where the estimated value of the proposed Contract is under £100,000.</p> | <p>30/06/16</p> <p>John Doherty, Director, ESPO</p> | <p>12RFQ01/16-01</p> <p>Painters' Sundries</p> | <p>Catalogue Procurement Team</p> | <p>Exception</p> | <p>11/07/16</p> <p>Approved by John Doherty, Director, ESPO</p> <p>Authorised the exception for the reasons captured in the Report of the Director 'Proposed Changes to the Contract Procedure Rules'.</p> |

Appendix A

Period 1st July 2015 to 30th June 2016

| | | | | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|-------------------------------------|-----------------------------------|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>30/06/16</p> <p>Having subjected the requirement to competition within the European Union on two separate occasions no suitable sources of supply had been secured for 2 sub lots. Value = £10k.</p> <p>Exception request made under Rule 5(b)(i) which provides authority to the Director of ESPO to agree exception where the estimated value of the proposed Contract is under £100,000.</p> | <p>30/06/16</p> <p>John Doherty, Director, ESPO</p> | <p>12RFQ01/16-02</p> <p>Mirrors</p> | <p>Catalogue Procurement Team</p> | <p>Exception</p> | <p>11/07/16</p> <p>Approved by John Doherty, Director, ESPO</p> <p>Authorised the exception for the reasons captured in the Report of the Director 'Proposed Changes to the Contract Procedure Rules'</p> |
| <p>30/06/16</p> <p>Having subjected the requirement to competition within the European Union on two separate occasions no suitable sources of supply had been secured for 1 sub lot. Value = £1.5k.</p> <p>Exception request made under Rule 5(b)(i) which provides authority to the Director of ESPO to agree exception where the estimated value of the proposed Contract is under £100,000.</p> | <p>30/06/16</p> <p>John Doherty, Director, ESPO</p> | <p>144RFQ02/16-01</p> <p>PPE</p> | <p>Catalogue Procurement Team</p> | <p>Exception</p> | <p>11/07/16</p> <p>Approved by John Doherty, Director, ESPO</p> <p>Authorised the exception for the reasons captured in the Report of the Director 'Proposed Changes to the Contract Procedure Rules'</p> |

| ESPO Current Provisions | ESPO Proposed Amendments |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>PREAMBLE TO CPRS</p> <p>These Contract Procedure Rules are to be read in conjunction with the Eastern Shires Purchasing Organisation (ESPO) Constitution and the Scheme of Delegation to the Director of ESPO and in the event of conflict the provisions in the ESPO Constitution and the Scheme of Delegation shall prevail.</p> <p>ESPO is a joint Committee of Local Authorities which operates within the Local Government (Goods & Services) Act 1970.</p> <p>ESPO acts as a purchasing agent for its member authorities which include the county councils of Leicestershire, Lincolnshire, Cambridgeshire, Norfolk, Warwickshire, and the city council of Peterborough, as well as non-member local authorities and other customers, including public sector commercial organisations, charities and voluntary sector organisations.</p> <p>The Contract Procedure Rules apply where ESPO is acting alone or for a wider group of member authorities and/or non-member local authorities and/or other customers. Where ESPO is acting on behalf of one of its members, the member’s Contract Procedure Rules will apply. Where ESPO is acting on behalf of one non-member authority or customer, ESPO’s Contract Procedure Rules shall apply, unless it is agreed with the non-member or customer that their Contract Procedure Rules apply.</p> <p>Leicestershire County Council acts as ESPO’s ‘Servicing Authority’, providing appropriate professional support, including secretarial, administrative, legal, personnel, and financial services. Leicestershire County Council’s Section 151 Officer acts as ESPO’s Treasurer, and has a responsibility to ensure that decisions relating to the finance and financial management of ESPO are sound. Leicestershire County Council’s County Solicitor (“the County Solicitor”) provides legal advice to ESPO on behalf of the Consortium Secretary.</p> | <p>PREAMBLE TO CPRS</p> <p>These Contract Procedure Rules are to be read in conjunction with the Eastern Shires Purchasing Organisation (ESPO) Constitution and the Scheme of Delegation to the Director of ESPO and in the event of conflict the provisions in the ESPO Constitution and the Scheme of Delegation shall prevail.</p> <p>ESPO is a joint Committee of Local Authorities which operates within the Local Government (Goods & Services) Act 1970.</p> <p>ESPO acts as a purchasing agent for its member authorities which include the county councils of Leicestershire, Lincolnshire, Cambridgeshire, Norfolk, Warwickshire, and the city council of Peterborough, as well as non-member local authorities and other customers, including public sector commercial organisations, charities and voluntary sector organisations.</p> <p>The Contract Procedure Rules apply where ESPO is acting alone or for a wider group of member authorities and/or non-member local authorities and/or other customers. Where ESPO is acting on behalf of one of its members, the member’s Contract Procedure Rules will apply. Where ESPO is acting on behalf of one non-member authority or customer, ESPO’s Contract Procedure Rules shall apply, unless it is agreed with the non-member or customer that their Contract Procedure Rules apply.</p> <p>Leicestershire County Council acts as ESPO’s ‘Servicing Authority’, providing appropriate professional support, including secretarial, administrative, legal, personnel, and financial services. Leicestershire County Council’s Section 151 Officer acts as ESPO’s Treasurer, and has a responsibility to ensure that decisions relating to the finance and financial management of ESPO are sound. Leicestershire County Council’s Director of Law and Governance (“the Director of Law and Governance”) provides legal advice to ESPO on behalf of the Consortium Secretary.</p> |
| <p>GENERAL</p> <p>RULE 1</p> <p>Compliance</p> <p>Officers must comply with these Rules. Failure to do so may result in disciplinary action.</p> | <p>GENERAL</p> <p>RULE 1 No proposed change</p> |
| <p>RULE 2</p> <p>Delegation</p> <p>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 Constitution.</p> | <p>RULE 2</p> <p>Delegation</p> <p>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.</p> |

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>RULE 3</p> <p>Interpretation</p> <p>Words and expressions used in these Rules are to be interpreted in accordance with the provisions of Schedule 1.</p> | <p>Rule 3 No proposed change</p> |
| <p>RULE 4</p> <p>Application</p> <p>These Rules apply to every procurement Contract made by or on behalf of ESPO, and every procurement Contract made on behalf of a group of ESPO members and/or non-members EXCEPT Contracts:</p> <ul style="list-style-type: none"> (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). | <p>Rule 4 No proposed change</p> |
| <p>PROCUREMENT PRINCIPLES</p> <p>RULE 5</p> <p>General Requirements</p> <ul style="list-style-type: none"> (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 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 | <p>PROCUREMENT PRINCIPLES</p> <p>RULE 5</p> <p>General Requirements</p> <ul style="list-style-type: none"> (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 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 |

APPENDIX B: Proposed Amendments to ESPO Contract Procedure Rules – from 1 March 2017

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>will be responsible for evaluating the financial status of Tenderers and suppliers.</p> <p>(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.</p> <p>(g) Procurement Exercises may be undertaken by electronic means provided that:</p> <p>(i) the requirements of these Rules are followed with only such modifications as may be necessary to allow for procurement by such means; and</p> <p>(ii) any electronic tendering system has been approved by the Director of ESPO.</p> <p>(h) Subject to the provisions of Rule 28 (b) Contracts shall not be longer than 5 years (including extensions) or of indeterminate length without the 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.</p> | <p>ESPO will be responsible for evaluating the financial status of Tenderers and suppliers.</p> <p>(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.</p> <p>(g) Procurement Exercises may be undertaken by electronic means provided that:</p> <p>(i) the requirements of these Rules are followed with only such modifications as may be necessary to allow for procurement by such means; and</p> <p>(ii) any electronic tendering system has been approved by the Director of ESPO.</p> <p>(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.</p> |
| <p>RULE 6</p> <p>Exceptions</p> <p>(a) Subject to the requirements of EU Directives, EU Treaties, Acts of Parliament and the Public Contracts Regulations 2015 the following Contracts may be placed by direct negotiation with one or more suppliers, Contracts:-</p> <p>(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 £164,176, a copy of the note and reasons must be provided to the Director of Corporate Resources and the County Solicitor.</p> <p>(ii) for works of art, museum specimens or historical documents;</p> <p>(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);</p> <p>In the above circumstances, the Procuring Officer must retain on file a record of the</p> | <p>RULE 6</p> <p>Exceptions</p> <p>(a) Subject to the requirements of EU Directives, EU Treaties, Acts of Parliament and the Public Contracts Regulations 2015 the following Contracts may be placed by direct negotiation with one or more suppliers, Contracts:-</p> <p>(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 £164,176, a copy of the note and reasons must be provided to the Director of Corporate Resources and the Director of Law and Governance.</p> <p>(ii) for works of art, museum specimens or historical documents;</p> <p>(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);</p> <p>In the above circumstances, the Procuring Officer must retain on file a record of the</p> |

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>negotiations surrounding the Contract awards and notify the Director of ESPO.</p> <p>(b) Other exceptions to these Rules may only be made within the relevant law and with the authority:-</p> <p>(i) of the Director of ESPO where the Estimated Value of the proposed Contract is under £164,176. The Director of ESPO shall maintain a record specifying the reason for all such departures; or</p> <p>(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.</p> <p>(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.</p> | <p>negotiations surrounding the Contract awards and notify the Director of ESPO.</p> <p>(b) Other exceptions to these Rules may only be made within the relevant law and with the authority:-</p> <p>(i) of the Director of ESPO where the Estimated Value of the proposed Contract is under £164,176. The Director of ESPO shall maintain a record specifying the reason for all such departures; or</p> <p>(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.</p> <p>(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.</p> |
| <p>RULE 7</p> <p><i>Financial Thresholds and Delegation</i></p> <p>(a) Financial limits and thresholds within these Rules may be varied from time to time by the Servicing Authority’s Corporate Governance Committee.</p> <p>(b) Arrangements for delegation of functions to officers within these Rules may be varied from time to time by the Chief Executive.</p> | <p>Rule 7 No proposed change</p> |
| <p>RULE 8</p> <p><i>Annual Reporting</i></p> <p>The Director of ESPO in consultation with the County Solicitor 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.</p> | <p>RULE 8</p> <p><i>Annual Reporting</i></p> <p>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.</p> |

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>RULE 9</p> <p><i>Prevention of Corruption / Conflict of Interest</i></p> <p>(a) The Employee Code of Conduct (Part 5b of the Servicing Authority’s Constitution) applies to any Procurement Exercise.</p> <p>(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):</p> <p>"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:</p> <p>(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</p> <p>(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</p> <p>(iii) commit any fraud in connection with this or any other ESPO/ESPO Client Contract whether alone or in conjunction with contractors or employees.</p> <p>Any clause limiting the Contractor's liability shall not apply to this clause".</p> | <p>RULE 9</p> <p><i>Prevention of Corruption / Conflict of Interest</i></p> <p>(a) The Employee Code of Conduct (Part 5b of the Servicing Authority’s Constitution) applies to any Procurement Exercise.</p> <p>(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):</p> <p>"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:</p> <p>(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</p> <p>(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</p> <p>(iii) commit any fraud in connection with this or any other ESPO/ESPO Client Contract whether alone or in conjunction with contractors or employees.</p> <p>Any clause limiting the Contractor's liability shall not apply to this clause".</p> <p>Rule 9 A</p> <p><i>Counter Terrorism and Security Act 2015</i></p> <p>Where appropriate, the Contract shall make appropriate provision for information sharing between the Contractor and ESPO, 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.</p> |
| <p>PROCUREMENT EXERCISE</p> <p>RULE 10</p> <p><i>Pre-Estimate</i></p> <p>(a) Before any Procurement Exercise is begun the Procuring Officer must calculate its Estimated Value in accordance with this Rule.</p> <p>(b) The Estimated Value shall be calculated as follows:</p> | <p>Rule 10 No proposed change</p> |

APPENDIX B: Proposed Amendments to ESPO Contract Procedure Rules – from 1 March 2017

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <ul style="list-style-type: none"> (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 be the value of the scheme or Contracts which may be awarded as a result; (iv) For Concessions the Estimated Value shall be the estimated gross value of the service before income over the Contract period. (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. <p>(c) Where there is any doubt as to the Estimated Value then the procedure for the higher threshold in Rule 11 must be used.</p> | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

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.

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 |
| Above £5,000 | £25,000 | Obtain three written Quotations | | Record details. (If three Quotations |

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.

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 |
| Above £5,000 | £25,000 | Obtain three written Quotations | When inviting quotations officers | Record details. (If three Quotations |

APPENDIX B: Proposed Amendments to ESPO Contract Procedure Rules – from 1 March 2017

| | | | | | | | | | |
|-------------------------------------------------------------|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| | | (where practical) | | cannot be obtained a record of the reasons for this must be maintained and forwarded to the appropriate Procurement Service Manager). 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 . | | | (where practical) | should consider the benefits of including a local supplier in the invitation to quote where appropriate or applicable to the Contract ¹ . | cannot be obtained a record of the reasons for this must be maintained and forwarded to the appropriate Procurement Service Manager). |
| | | | | | Above £25,000 | Up to but not including £164,176 | Seek written Quotations (to be based on a Request for Quotation document where practical) For exceptions see Rule 6 (b) | Contracts Finder and on 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. |
| Above £25,000 | Up to but not including £164,176 | Seek written Quotations (to be based on a Request for Quotation document where practical) For exceptions see Rule 6 (b) | 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 £164,176 | To the relevant EU Threshold | Formal Tender Process | OJEU 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 (may be submitted via an electronic tendering system, see Rule 5 (g) (ii)) |
| Equal to or Above £164,176 | To the relevant EU Threshold | Formal Tender Process | OJEU 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 (may be submitted via an electronic tendering system, see Rule 5 (g) (ii)) | EU Threshold | Above | Formal Tender Process | OJEU 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 (may be submitted via an electronic tendering system, see Rule 5 (g) (ii)) |
| EU Threshold | Above | Formal Tender Process | OJEU required, Contracts Finder and on a website approved by the Director of ESPO for the purpose of notifying the supply market | | (b) Details of oral Quotations must be recorded in writing. | | | | |
| (b) Details of oral Quotations must be recorded in writing. | | | | | | | | | |

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.

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>RULE 12</p> <p><i>Suitability Assessment and Award Evaluation Criteria</i></p> <p>(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 standardised form of Suitability Assessment Questions must be used.</p> <p>(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 Standardised Pre-Qualification Questionnaire must be used for the selection criteria;</p> <p>(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).</p> | <p>RULE 12</p> <p><i>Suitability Assessment and Award Evaluation Criteria</i></p> <p>(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 standardised form of Suitability Assessment Questions must be used.</p> <p>(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 Selection Questionnaire or the European Single Procurement Document must be used for the selection criteria;</p> <p>(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).</p> |
| <p>RULE 13</p> <p><i>Award Methodology and Evaluation Criteria</i></p> <p>(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 or 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.</p> <p>(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.</p> <p>(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.</p> <p>(d) The Procuring Officer must notify all Tenderers of the award methodology and evaluation criteria being used in the case of the Contract in question. If weightings are to be applied to the criteria then the Procuring Officer must ensure that these are also incorporated into the Invitation to Tender.</p> | <p>RULE 13</p> <p><i>Award Methodology and Evaluation Criteria</i></p> <p>(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 or 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.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> |

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 in the OJEU and on Contracts Finder.
- (c) For all proposed Contracts which are advertised where the Total 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 Suitability Assessment Questionnaire, 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 in the OJEU 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) Only in exceptional circumstances should a Contract Opportunity Publication appear in ANY form before publication in the OJEU and neither should any advertisement contain any more information than that published in the OJEU.
- (f) The advertising requirements set out in this Rule 14 are minimum requirements and does not preclude further Contract Opportunity Publication where appropriate (e.g. in the local newspaper, trade or professional journal, the ESPO website).

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 in the OJEU 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 Suitability Assessment Questionnaire, 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 in the OJEU 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) Only in exceptional circumstances should a Contract Opportunity Publication appear in ANY form before publication in the OJEU and neither should any advertisement contain any more information than that published in the OJEU.
- (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).

| | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | |
| <p>PROCUREMENT PROCESS</p> <p>RULE 15</p> <p><i>Open Tendering</i></p> <p>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.</p> | <p>Rule 15 No proposed change</p> |
| <p>RULE 16</p> <p><i>Restricted Tendering</i></p> <p>(a) Subject to Rule 16 (b), this Rule applies to Tenders where the Estimated Value is equal to or exceeds the EU Threshold.</p> <p>(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.</p> <p>(c) Under Restricted Tendering, the Procuring Officer need only send Invitations to Tender to:</p> <p>(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</p> <p>(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).</p> <p>(d) The shortlisting criteria and process must be prepared (in consultation with the ESPO Client) in advance of the issue of the Standardised Pre-Qualification Questionnaire and a copy retained on file.</p> <p>(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</p> | <p>RULE 16</p> <p><i>Restricted Tendering</i></p> <p>(a) Subject to Rule 16 (b), this Rule applies to Tenders where the Estimated Value is equal to or exceeds the EU Threshold.</p> <p>(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.</p> <p>(c) Under Restricted Tendering, the Procuring Officer need only send Invitations to Tender to:</p> <p>(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</p> <p>(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).</p> <p>(d) The shortlisting criteria and process must be prepared (in consultation with the ESPO Client) in advance of the issue of the Selection Questionnaire and a copy retained on file.</p> <p>(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</p> |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>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.</p> | <p>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.</p> |
| <p>RULE 17</p> <p><i>Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue Procedure and Innovation Partnership Procedure</i></p> <p>The Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue Procedure and Innovation Partnership Procedure must only be used with the prior approval of the County Solicitor and the Director of Corporate Resources.</p> <p><i>[Note: A short briefing note for the approval of the Director of Corporate Resources, in consultation with the County Solicitor, is required to justify the use of the Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue Procedure and Innovation Partnership Procedure.]</i></p> | <p>RULE 17</p> <p><i>Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue Procedure and Innovation Partnership Procedure</i></p> <p>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.</p> <p><i>[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 and Innovation Partnership Procedure.]</i></p> |
| <p>RULE 18</p> <p><i>Invitations to Tender</i></p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(d) All Procurement Exercises equal to or greater than £25,000 shall be handled via an Electronic Tendering System. 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.</p> <p>(e) Where 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.</p> | <p>Rule 18 No proposed change</p> |

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 £164,176 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 County Solicitor, 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 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 £164,176 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.

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| | |
| <p>RULE 20</p> <p><i>Receipt and Opening of Tenders</i></p> <p>(a) Rule 20 (b) to (f) apply only to Tenders where the Estimated Value is equal to or greater than £164,176 and the Tender is not an E-Tender. Rule 20 (g) applies to E-Tenders only.</p> <p>(b) On receipt, envelopes containing Tenders must be date and time stamped by the Director of ESPO and shall remain in his custody until they are opened.</p> <p>(c) The Director of ESPO must keep a record of all Tenders received.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(g) E-Tenders must be opened in accordance with the requirements of the Electronic Tendering System used.</p> | <p>Rule 20 No proposed change</p> |
| <p>RULE 21</p> <p><i>Errors or Discrepancies in Tenders</i></p> <p>(a) Tenderers are not allowed to alter their Tenders after opening save in accordance with this Rule or Rule 22.</p> <p>(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</p> | <p>Rule 21 No proposed change</p> |

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>place with Tenderers in order to:</p> <ul style="list-style-type: none"> (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. <p>(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.</p> | |
| <p>RULE 22</p> <p><i>Discussions and Post Tender Negotiations</i></p> <p>(a) In the case where the Estimated Value was 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:</p> <ul style="list-style-type: none"> (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. <p>(b) When conducting Post Tender Negotiations, the following additional rules shall apply:</p> <ul style="list-style-type: none"> (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 | <p>RULE 22</p> <p><i>Discussions and Post Tender Negotiations</i></p> <p>(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:</p> <ul style="list-style-type: none"> (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. <p>(b) When conducting Post Tender Negotiations, the following additional rules shall apply:</p> <ul style="list-style-type: none"> (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 |

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>lowest.</p> <ul style="list-style-type: none"> (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 County Solicitor shall determine whether any proposed change to the specification constitutes a material departure. <p>(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.</p> | <p>the lowest.</p> <ul style="list-style-type: none"> (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. <p>(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.</p> |
| <p>AWARD OF CONTRACT</p> <p>RULE 23</p> <p><i>Acceptance of Tenders</i></p> <ul style="list-style-type: none"> (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) 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 | <p>Rule 23 No proposed change</p> |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Management Committee to determine.</p> | |
| <p>RULE 24</p> <p><i>Notification of Contract Award</i></p> <p>(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.</p> <p>(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.</p> <p>(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 a reasonable time.</p> <p>(d) In the case where the Estimated Value is equal to or greater than the relevant EU Threshold the following additional Rules will apply:</p> <p>(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.</p> <p>(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.</p> <p>(iii) The Procuring Officer shall ensure that an OJEU contract award notice 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</p> | <p>RULE 24</p> <p><i>Notification of Contract Award</i></p> <p>(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.</p> <p>(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.</p> <p>(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 a reasonable time.</p> <p>(d) In the case where the Estimated Value is equal to or greater than the relevant EU Threshold the following additional Rules will apply:</p> <p>(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.</p> <p>(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.</p> <p>(iii) The Procuring Officer shall ensure that an OJEU contract award notice 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</p> |

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>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.</p> | <p>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.</p> |
| <p>RULE 25</p> <p>Form of Contract</p> <p>(a) A Contract shall be formed:</p> <ul style="list-style-type: none"> (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. <p>(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 County Solicitor considers it inappropriate to do so.</p> <p>(c) All Contracts with an Estimated Value of £25,000 or more must be in writing and where appropriate the Director of ESPO shall:</p> <ul style="list-style-type: none"> (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 an insurance policy, which can be inspected during the Contract period. The Director of ESPO shall be consulted on the insurance requirements. <p><i>[Note: Insurance Levels (which may be amended for a specific Procurement Exercise,</i></p> | <p>RULE 25</p> <p>Form of Contract</p> <p>(a) A Contract shall be formed:</p> <ul style="list-style-type: none"> (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. <p>(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.</p> <p>(c) All Contracts with an Estimated Value of £25,000 or more must be in writing and where appropriate the Director of ESPO shall:</p> <ul style="list-style-type: none"> (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. <p><i>[Note: Insurance Levels (which may be amended for a specific Procurement Exercise,</i></p> |

| | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>where appropriate, and agreed by the Procuring Officer with the Servicing Authority’s Insurance Manager):</p> <ul style="list-style-type: none"> ○ Employers Insurance = £10m (for each and every occurrence) ○ Public/Third Party Insurance (including Products Liability, if needed) = £10m (for each and every occurrence) ○ Professional Indemnity (where appropriate) = £2m. <p>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.]</p> <p>(iv) consult the Director of ESPO on the appropriate VAT requirements.</p> <p>[Note: Should any advice on VAT be required for a particular Procurement Exercise, contact the Servicing Authority’s Technical Accountant - Taxation Co-ordinator]</p> <p>(d) Every Contract must be signed by the Director of ESPO or an Officer designated by him or her and in cases determined by the County Solicitor shall be under seal in the form prepared or approved by him or her.</p> <p>(e) Except after consultation with the County Solicitor, work 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 County Solicitor has advised that the Contract has been signed by the supplier.</p> | <p>where appropriate, and agreed by the Procuring Officer with the Servicing Authority’s Insurance Manager):</p> <ul style="list-style-type: none"> ○ Employers Insurance = £10m (for each and every occurrence) ○ Public/Third Party Insurance (including Products Liability, if needed) = £10m (for each and every occurrence) ○ Professional Indemnity (where appropriate) = £2m. <p>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.]</p> <p>(iv) consult the Director of ESPO on the appropriate VAT requirements.</p> <p>[Note: Should any advice on VAT be required for a particular Procurement Exercise, contact the Servicing Authority’s Technical Accountant - Taxation Co-ordinator]</p> <p>(d) Every Contract must be signed by the Director of ESPO or an Officer designated by him or her and in cases determined by the Director of Law and Governance shall be under seal in the form prepared or approved by him or her.</p> <p>(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.</p> |
| <p>RULE 26</p> <p>Orders for work, goods and services</p> <p>Orders for work, goods and services must only be placed in accordance with Instruction 8 of the Standard Financial Instructions.</p> | <p>Rule 26 No proposed change</p> |
| <p>STANDING LISTS</p> <p>RULE 27</p> <p>Standing Lists</p> <p>(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.</p> <p>(b) The Procuring Officer must not use a Standing List where the Total Value of Contracts to</p> | <p>Rule 27 No proposed change</p> |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>be awarded using the Standing List is estimated to exceed the relevant EU Threshold.</p> <p>(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.</p> <p>(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.</p> <p>(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).</p> <p>(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.</p> <p>(g) The Procuring Officer in consultation with the appropriate Procurement Service Manager shall determine the criteria for selecting Persons from the list.</p> <p>(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.</p> | |
| <p>FRAMEWORK AGREEMENTS</p> <p>RULE 28</p> <p><i>Framework Agreements</i></p> <p>(a) The Procuring Officer must establish all Framework Agreements in accordance with these Rules.</p> <p>(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 County Solicitor.</p> <p>(c) All suppliers on the Framework Agreement capable of performing the Contract must be</p> | <p>FRAMEWORK AGREEMENTS</p> <p>RULE 28</p> <p><i>Framework Agreements</i></p> <p>(a) The Procuring Officer must establish all Framework Agreements in accordance with these Rules.</p> <p>(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.</p> <p>(c) All suppliers on the Framework Agreement capable of performing the Contract must be</p> |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>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.</p> <p>(d) Additional suppliers may only be added to a Framework Agreement throughout its duration in circumstances where:</p> <p>(i) the Estimated Value is below the EU Threshold;</p> <p>(ii) the services tendered are Light-Touch Services to which the full regime of the Public Contracts Regulations 2015 is not considered to apply; and</p> <p>provided that the Invitation to tender states:</p> <p>(i) that new suppliers may be added to the Framework Agreement;</p> <p>and</p> <p>(ii) how many suppliers can apply to be added to the Framework Agreement; and</p> <p>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.</p> | <p>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.</p> <p>(d) Additional suppliers may only be added to a Framework Agreement throughout its duration in circumstances where:</p> <p>(i) the Estimated Value is below the EU Threshold;</p> <p>(ii) the services tendered are Light-Touch Services to which the full regime of the Public Contracts Regulations 2015 is not considered to apply and provided that the Invitation to Tender states:</p> <p>(aa) that new suppliers may be added to the Framework Agreement;</p> <p>and</p> <p>(bb) how many suppliers can apply to be added to the Framework Agreement;</p> <p>and</p> <p>(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.</p> |
| <p>RULE 29</p> <p><i>Dynamic Purchasing Systems</i></p> <p>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.</p> | <p>Rule 29 No proposed change</p> |
| <p>CONTRACT AMENDMENTS</p> <p>RULE 30</p> <p>Contract Modifications and Extensions</p> <p>Contract Modifications</p> <p>(a) Subject to Rule 30(b) below, Contracts may be modified where the value of the modification is;</p> <p>(i) below the current EU Threshold for service/supply/works contracts; and</p> <p>(ii) is less than 10% of the initial Contract value for service and supply contracts</p> | <p>CONTRACT AMENDMENTS</p> <p>RULE 30</p> <p>Contract Modifications and Extensions</p> <p>Contract Modifications</p> <p>(a) Subject to Rule 30(b) below, Contracts may be modified where the value of the modification is;</p> <p>(i) below the current EU Threshold for service/supply/works Contracts; and</p> <p>(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.</p> <p>(b) The Director of ESPO in consultation with the appropriate Procurement Service Manager</p> |

and less than 15% of the initial Contract value for works.

- (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) In all other circumstances, where the proposed modification exceeds the values stated under Rule 30(a) (i) and/or 30(a) (ii) or where the proposed modification does not fall within Rule 30(a) above, the Director of ESPO in consultation with the appropriate Procurement Service Manager and the County Solicitor must gain the prior approval of the Director of Corporate Resources. This authorisation must be issued before the supply, services or works are carried out.
- (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 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, OJEU notice, 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 County Solicitor 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.

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) In all other circumstances, where the proposed modification exceeds either of the values stated under Rule 30(a) or where the proposed modification does not fall within Rule 30(a) above, 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 supply, services or works are carried out.
 - (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 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, OJEU notice, 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.

| | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>RULE 31</p> <p><i>Novation of Existing Contracts</i></p> <p>The novation of a Contract to a new Person requires the prior written approval of the Director of ESPO in consultation with the County Solicitor.</p> | <p>RULE 31</p> <p><i>Novation of Existing Contracts</i></p> <p>The novation of a Contract to a new Person requires the prior written approval of the Director of ESPO in consultation with the Director of Law and Governance.</p> |
| <p>RULE 32</p> <p><i>Early Termination of Contracts</i></p> <p>Unless a provision for early termination is clearly stated in the Contract the Procuring Officer shall seek advice from the County Solicitor where it is intended to terminate a Contract early. Where the Total Value of the Contract is equal to £164,176 or more the prior written approval of the Director of ESPO shall also be obtained.</p> | <p>RULE 32</p> <p><i>Early Termination of Contracts</i></p> <p>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 £164,176 or more the prior written approval of the Director of ESPO shall also be obtained.</p> |
| <p>MISCELLANEOUS PROVISIONS</p> <p>RULE 33</p> <p><i>Document Retention</i></p> <p>(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.</p> <p>(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.</p> | <p>Rule 33 No proposed change</p> |
| <p>RULE 34</p> <p><i>Supervision of Contracts by Third Parties</i></p> <p>(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.</p> <p>(b) Such Person must:</p> <p>(i) at any time during the carrying out of the Contract produce to the Director of ESPO or his representative or ESPO Auditor on request all records maintained by him or her in relation to the Contract; and</p> <p>(ii) on completion of the Contract transmit all records to the Director of ESPO.</p> | <p>Rule 34 No proposed change</p> |

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>RULE 35</p> <p><i>Nominated Sub-Contractors and Suppliers</i></p> <p>(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.</p> <p>(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.</p> | <p>Rule 35 No proposed change</p> |
| <p>SCHEDULE 1</p> <p><i>Interpretation</i></p> <ol style="list-style-type: none"> 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. "Concessions" are contracts of the same type as public service contracts, except for the fact that the consideration for the provision of services or works consists either solely in the right to exploit the service or work, or in this right together with payment. 4. "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. 5. "Contract Extension" means an extension to the duration of the Contract, but not including any alteration to the scope of the Contract. 6. "Contracts Finder" means the web-based portal provided for the purposes of Part 4 of the Public Contracts Regulations 2015. 7. "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. 8. "Contract Modification" means an alteration to the scope of the Contract, but not the extension of the duration of the Contract. 9. The "County Solicitor" is the County Solicitor of the Servicing Authority, Leicestershire County Council. | <p>SCHEDULE 1</p> <p><i>Interpretation</i></p> <ol style="list-style-type: none"> 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. "Concessions" are contracts of the same type as public service contracts, except for the fact that the consideration for the provision of services or works consists either solely in the right to exploit the service or work, or in this right together with payment. 4. "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. 5. "Contract Extension" means an extension to the duration of the Contract, but not including any alteration to the scope of the Contract. 6. "Contracts Finder" means the web-based portal provided for the purposes of Part 4 of the Public Contracts Regulations 2015. 7. "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. 8. "Contract Modification" means an alteration to the scope of the Contract, but not the extension of the duration of the Contract. 9. The "Director of Corporate Resources" is the Director of Corporate Resources of the Servicing Authority, Leicestershire County Council. The ESPO Treasurer is the Section 151 |

APPENDIX B: Proposed Amendments to ESPO Contract Procedure Rules – from 1 March 2017

10. The "Director of Corporate Resources" is the Director of Corporate Resources of the Servicing Authority, Leicestershire County Council. The ESPO Treasurer is the Section 151 Officer, Leicestershire County Council.
11. "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.
12. "Electronic Tendering System" means an electronic tendering system approved in accordance with Rule 5 (g) (ii).
13. 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.
14. "ESPO Client" means a group of ESPO member authorities and/or non-member local authorities and/or other customers, including commercial organisations, charities and voluntary sector organisations, for which ESPO is managing a procurement process.
15. "Estimated Value" means the value as estimated under Rule 10.
16. "EU Threshold" means the respective threshold for Services, Supplies, Works or Light-Touch Services contracts referred to in the Public Contract Regulations 2015.
17. "E-Tender" means a Tender that has been submitted using an Electronic Tendering System.
18. "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.
19. "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 2006 and 2015 apply.
20. 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.
21. "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

Officer, Leicestershire County Council.

10. The "Director of Law and Governance" is the Director of Law and Governance of the Servicing Authority, Leicestershire County Council.
11. "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.
12. "Electronic Tendering System" means an electronic tendering system approved in accordance with Rule 5 (g) (ii).
13. 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.
14. "ESPO Client" means a group of ESPO member authorities and/or non-member local authorities and/or other customers, including commercial organisations, charities and voluntary sector organisations, for which ESPO is managing a procurement process.
15. "Estimated Value" means the value as estimated under Rule 10.
16. "EU Threshold" means the respective threshold for Services, Supplies, Works or Light-Touch Services contracts referred to in the Public Contract Regulations 2015.
17. "E-Tender" means a Tender that has been submitted using an Electronic Tendering System.
18. "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.
19. "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 2006 and 2015 apply.
20. 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.
21. "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

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Formal Tenders.</p> <p>22. "Irregular Tender" means a Tender that does not fully comply with the instructions given in the Invitation to Tender.</p> <p>23. "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:</p> <ul style="list-style-type: none"> (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. <p>24. "Light-Touch Services" means those services referred to in regulation 74 and Schedule 3 of the Public Contracts Regulations 2015.</p> <p>25. "Officer" means an employee of ESPO.</p> <p>26. "OJEU" means Official Journal of the European Union.</p> <p>27. "Person" includes a partnership, body corporate or unincorporated association.</p> <p>28. "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.</p> <p>29. "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 shall be treated as a Procurement Exercise.</p> <p>30. "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.</p> <p>31. "Procurement Service Manager" is the most senior Procurement Officer within an ESPO Category Team, and is responsible for managing the section.</p> | <p>Formal Tenders.</p> <p>22. "Irregular Tender" means a Tender that does not fully comply with the instructions given in the Invitation to Tender.</p> <p>23. "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:</p> <ul style="list-style-type: none"> (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. <p>24. "Light-Touch Services" means those services referred to in regulation 74 and Schedule 3 of the Public Contracts Regulations 2015.</p> <p>25. "Officer" means an employee of ESPO.</p> <p>26. "OJEU" means Official Journal of the European Union.</p> <p>27. "Person" includes a partnership, body corporate or unincorporated association.</p> <p>28. "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.</p> <p>29. "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 shall be treated as a Procurement Exercise.</p> <p>30. "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.</p> <p>31. "Procurement Service Manager" is the most senior Procurement Officer within an ESPO Category Team, and is responsible for managing the team.</p> <p>32. "Public Contracts Regulations 2015" means the Public Contracts Regulations 2015 as</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

APPENDIX B: Proposed Amendments to ESPO Contract Procedure Rules – from 1 March 2017

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>32. "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.</p> <p>33. "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.</p> <p>34. "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.</p> <p>35. "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.</p> <p>36. "Standardised Pre-Qualification Questionnaire" means a questionnaire that complies with the Crown Commercial Service statutory guidance relating to Pre-Qualification Questionnaires.</p> <p>37. "Standing List" means a list of Persons which has been established in accordance with Rule 27.</p> <p>38. "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.</p> <p>39. "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.</p> <p>40. "Tenderer" or "Tenderers" means the Person or Persons invited to participate in a Procurement Exercise.</p> <p>41. "Total Value" means the value of a Contract which has been calculated in accordance with Rule 10(b) (excluding Rule 10(b) (vi)) reading where appropriate Total Value for Estimated Value.</p> <p>42. "In writing" or "written" for the purpose of interpreting these Rules includes transmission by any electronic means which have been approved by the County Solicitor in consultation with the Director of Corporate Resources.</p> <p>43. Words imparting the masculine include the feminine gender.</p> | <p>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.</p> <p>33. "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.</p> <p>34. "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.</p> <p>35. "Selection Questionnaire" means a questionnaire that complies with the Crown Commercial Service statutory guidance relating to Selection Questionnaires.</p> <p>36. "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.</p> <p>37. "Standing List" means a list of Persons which has been established in accordance with Rule 27.</p> <p>38. "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.</p> <p>39. "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.</p> <p>40. "Tenderer" or "Tenderers" means the Person or Persons invited to participate in a Procurement Exercise.</p> <p>41. "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.</p> <p>42. "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.</p> <p>43. Words imparting the masculine include the feminine gender.</p> <p>44. "Rule(s)" means these Contract Procedure Rules as may be amended from time to time.</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

44. "Rule(s)" means these Contract Procedure Rules as may be amended from time to time.

[end of Contract Procedure Rules]

[end of Contract Procedure Rules]

This page is intentionally left blank

**CONTRACT PROCEDURE
RULES**

**Eastern Shires Purchasing Organisation
(ESPO)**

Contract Procedure Rules

From 1 March 2017

ESPO Contract Procedure Rules

These Contract Procedure Rules are to be read in conjunction with the Eastern Shires Purchasing Organisation (ESPO) Constitution and the Scheme of Delegation to the Director of ESPO and in the event of conflict the provisions in the ESPO Constitution and the Scheme of Delegation shall prevail.

ESPO is a joint Committee of Local Authorities which operates within the Local Government (Goods & Services) Act 1970.

ESPO acts as a purchasing agent for its member authorities which include the county councils of Leicestershire, Lincolnshire, Cambridgeshire, Norfolk, Warwickshire, and the city council of Peterborough, as well as non-member local authorities and other customers, including public sector commercial organisations, charities and voluntary sector organisations.

The Contract Procedure Rules apply where ESPO is acting alone or for a wider group of member authorities and/or non-member local authorities and/or other customers. Where ESPO is acting on behalf of one of its members, the member's Contract Procedure Rules will apply. Where ESPO is acting on behalf of one non-member authority or customer, ESPO's Contract Procedure Rules shall apply, unless it is agreed with the non-member or customer that their Contract Procedure Rules apply.

Leicestershire County Council acts as ESPO's 'Servicing Authority', providing appropriate professional support, including secretarial, administrative, legal, personnel, and financial services. Leicestershire County Council's Section 151 Officer acts as ESPO's Treasurer, and has a responsibility to ensure that decisions relating to the finance and financial management of ESPO are sound. Leicestershire County Council's Director of Law and Governance ("the Director of Law and Governance") provides legal advice to ESPO on behalf of the Consortium Secretary.

GENERAL

RULE 1

Compliance

Officers must comply with these Rules. Failure to do so may result in disciplinary action.

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 every procurement Contract made by or on behalf of ESPO, and every procurement Contract made on behalf of a group of ESPO members and/or non-members 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).

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 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 may 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 and the Public Contracts Regulations 2015 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 £164,176, 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 where the Estimated Value of the proposed Contract is under £164,176. 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".

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, 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.
- (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 be the value of the scheme or Contracts which may be awarded as a result;
 - (iv) For Concessions the Estimated Value shall be the estimated gross value of the service before income over the Contract period.
 - (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.

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 |
| Above £5,000 | £25,000 | Obtain three written Quotations (where practical) | When inviting quotations officers should consider the benefits of including a local supplier in the | Record details. (If three Quotations cannot be obtained a record of the reasons for this must be |

| Estimated Contract Value | | Procurement Process | Minimum Contract Opportunity Publication | Documentation |
|----------------------------|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| From (£) | Up to (£) | | | |
| | | | invitation to quote where appropriate or applicable to the Contract ¹ . | maintained and forwarded to the appropriate Procurement Service Manager). |
| Above £25,000 | Up to but not including £164,176 | 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 £164,176 | To the relevant EU Threshold | Formal Tender Process | OJEU 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 (may be submitted via an electronic tendering system, see Rule 5 (g) (ii)) |
| EU Threshold | Above | Formal Tender Process | OJEU 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 (may be submitted via an electronic tendering system, see Rule 5 (g) (ii)) |

(b) Details of oral Quotations must be recorded in writing.

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 standardised form of Suitability Assessment Questions must be used.
- (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 Selection Questionnaire or the European Single Procurement Document must be used for the selection criteria;

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.

- (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 in the OJEU 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 Suitability Assessment Questionnaire, 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 in the OJEU 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) Only in exceptional circumstances should a Contract Opportunity Publication appear in ANY form before publication in the OJEU and neither should any advertisement contain any more information than that published in the OJEU.
- (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.

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 the ESPO Client) in advance of the issue of the Selection Questionnaire 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.

[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 and Innovation Partnership Procedure.]

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.
- (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. 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 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 £164,176 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 £164,176 and the Tender is not an E-Tender. Rule 20 (g) applies to E-Tenders only.
- (b) On receipt, envelopes containing 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 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) 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 a reasonable time.

- (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 an OJEU contract award notice 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.

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):

- *Employers Insurance = £10m (for each and every occurrence)*
- *Public/Third Party Insurance (including Products Liability, if needed) = £10m (for each and every occurrence)*
- *Professional Indemnity (where appropriate) = £2m.*

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 the Director of ESPO or an Officer designated by him or her and in cases determined by the Director of Law and Governance shall be under seal in the form prepared or approved by her.
- (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.

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.
- (d) Additional suppliers may only be added to a Framework Agreement 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 and 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) In all other circumstances, where the proposed modification exceeds either of the values stated under Rule 30(a) or where the proposed modification does not fall within Rule 30(a) above, 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 supply, services or works are carried out.
- (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

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, OJEU notice, 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 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 £164,176 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 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.

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. "Concessions" are contracts of the same type as public service contracts, except for the fact that the consideration for the provision of services or works consists either solely in the right to exploit the service or work, or in this right together with payment.
4. "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.
5. "Contract Extension" means an extension to the duration of the Contract, but not including any alteration to the scope of the Contract.
6. "Contracts Finder" means the web-based portal provided for the purposes of Part 4 of the Public Contracts Regulations 2015.
7. "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.
8. "Contract Modification" means an alteration to the scope of the Contract, but not the extension of the duration of the Contract.
9. The "Director of Corporate Resources" is the Director of Corporate Resources of the Servicing Authority, Leicestershire County Council. The ESPO Treasurer is the Section 151 Officer, Leicestershire County Council.
10. The "Director of Law and Governance" is the Director of Law and Governance of the Servicing Authority, Leicestershire County Council.
11. "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.
12. "Electronic Tendering System" means an electronic tendering system approved in accordance with Rule 5 (g) (ii).
13. 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.
14. "ESPO Client" means a group of ESPO member authorities and/or non-member local authorities and/or other customers, including commercial organisations, charities and voluntary sector organisations, for which ESPO is managing a procurement process.
15. "Estimated Value" means the value as estimated under Rule 10.
16. "EU Threshold" means the respective threshold for Services, Supplies, Works or Light-Touch Services contracts referred to in the Public Contract Regulations 2015.

17. "E-Tender" means a Tender that has been submitted using an Electronic Tendering System.
18. "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.
19. "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 2006 and 2015 apply.
- 20.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.
21. "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.
22. "Irregular Tender" means a Tender that does not fully comply with the instructions given in the Invitation to Tender.
23. "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.
24. "Light-Touch Services" means those services referred to in regulation 74 and Schedule 3 of the Public Contracts Regulations 2015.
25. "Officer" means an employee of ESPO.
26. "OJEU" means Official Journal of the European Union.
27. "Person" includes a partnership, body corporate or unincorporated association.
28. "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.
29. "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 shall be treated as a Procurement Exercise.

30. "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.
31. "Procurement Service Manager" is the most senior Procurement Officer within an ESPO Category Team, and is responsible for managing the team.
32. "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.
33. "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.
34. "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.
35. "Standard Terms and Conditions" means the standard contractual terms used by ESPO, including those attached to procurement orders (or orders generated by 'line of business' systems, those included in Request for Quotation templates, and standard industry terms.
36. "Selection Questionnaire" means a questionnaire that complies with the Crown Commercial Service statutory guidance relating to Selection Questionnaires.
37. "Standing List" means a list of Persons which has been established in accordance with Rule 27.
38. "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.
39. "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.
40. "Tenderer" or "Tenderers" means the Person or Persons invited to participate in a Procurement Exercise.
41. "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.
42. "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.
43. Words imparting the masculine include the feminine gender.
44. "Rule(s)" means these Contract Procedure Rules as may be amended from time to time.

[end of Contract Procedure Rules]



ESPO MANAGEMENT COMMITTEE – 28 FEBRUARY 2017

**ANNUAL REVIEW OF ORGANISATIONAL APPROACH TO RISK
MANAGEMENT**

REPORT OF THE DIRECTOR

Purpose of Report

1. To provide members with an annual review of the ESPO's approach to risk management and approve changes or improvements to key elements of its processes and procedures'.

Risk

2. The current ESPO Risk Management Statement has been reviewed and updated as required.
3. The Corporate Risk Register is reviewed quarterly by the leadership team. Any increased risk, or new risk identified that could have a material impact on ESPO's business will be immediately reported to the member authorities.

Resources Implications

4. None

Recommendation

5. Members are asked to approve the revised Risk Management Statement.

Officer to Contact

John Doherty, Director
J.Doherty@espo.org
0116 265 7931

Chris Tambini, Consortium Treasurer
Chris.Tambini@leics.gov.uk
0116 305 7831

Appendices

Appendix 1: Risk Management Policy
Appendix 2: ESPO Corporate Risk Register greater than 10

This page is intentionally left blank

Eastern Shires Purchasing Organisation



RISK MANAGEMENT POLICY STATEMENT

116

Version Control

| Version | Date | By whom | Changes | Comments |
|---------|----------|---------|-------------------------------------|------------------------------------------|
| 1 | Feb 2007 | | Formulated | Committee March 2007 |
| 2 | Jan 2012 | DS | Review and Update | Circulation to SMT and Audit for comment |
| 2b | Feb 2012 | DS | Updated by strengthening commitment | Committee March 2012 |
| 2c | Feb 2013 | CP | Review and Update | Committee March 2013 |
| 2d | May 2014 | CP | Review and Update | Committee March 2014 |
| 3 | May 2015 | CP | Review and Update | Committee June 2015 |
| 4 | Feb 2016 | SL | Review and Update | Committee March 2016 |
| 5 | Feb 2017 | SL | Review and Update | Committee February 2017 |

Risk Management Policy Statement

Contents

| | |
|--------------------------------------------------------------------------------------------|-----------|
| RISK MANAGEMENT POLICY | 4 |
| Purpose of this document | 4 |
| Underlying approach to risk management | 5 |
| Role of the Management Committee | 6 |
| Role of the Director and Leadership Team | 6 |
| Role of Procurement Management | 7 |
| Risk management as part of the system of internal control | 7 |
| Annual review of effectiveness | 10 |
| RISK MANAGEMENT GUIDE | 12 |
| Background | 12 |
| Risk Definition..... | 12 |
| Internal controls..... | 13 |
| Risk Management Process..... | 14 |
| The stages are summarised below with a commentary on the arrangements at ESPO. | 14 |
| Identify the risks | 14 |
| Identify probable risk owner(s) and a risk co-ordinator | 15 |
| Evaluate the risks..... | 15 |
| Identify suitable responses to risk..... | 16 |
| Implement responses..... | 17 |
| Assurances about effectiveness | 17 |
| Embed and review | 17 |
| Size of Risk - Impact Guide | 18 |
| Impact Grid | 18 |
| Size of Risk – Impact Guide..... | 19 |

RISK MANAGEMENT POLICY

Definitions

Eastern Shires Purchasing Organisation - “The Organisation”

Eastern Shires Purchasing Organisation’s Risk Management Policy - “The Policy”

Definition of Risk

“The effect of uncertainty on objectives. This effect may be positive, negative or a deviation from the expected.”

Definition of Risk Management

“The process, by which risks are identified, evaluated and controlled”.

Purpose of this document

The Organisation recognizes that it has a responsibility to manage risks effectively. This should help to anticipate and provide a better understanding and respond to changing social, political, technological, economic, legislative and environmental threats.

Understanding the above should help the Organisation to minimise uncertainty in achieving its objectives and maximise the opportunities to achieve its vision.

The policy forms part of the Organisation’s internal control and corporate governance arrangements.

The policy explains the Organisation’s underlying approach to risk management, documents the roles and responsibilities of the Management Committee, the Director and Leadership Team, and other key parties. It also outlines key aspects of the risk management process, and identifies the main reporting procedures.

In addition, it describes the process the Management Committee will use to evaluate the effectiveness of the Organisation’s internal control procedures.

The benefit of risk management is having the knowledge both to anticipate potential risk, but also to understand how through choice such risks can be minimised. ESPO’s aim is to reduce the effects of risk, and/or increase its ability to react by maximising its flexibility through responding whilst maintaining organisational stability. Risk management therefore not only includes the ability to anticipate forward events through the marshalling of data into intelligence but also involves developing the organisation’s capabilities through continuous improvement.

Underlying approach to risk management

The following key principles outline the Organisation's approach to risk management and internal control:

- The Management Committee has ultimate responsibility for overseeing the process of risk management within the Organisation as a whole and they will approve the Risk Management Strategy on an annual basis.
- The Director and the Leadership Team are responsible for anticipating and identifying, assessing and managing risk, and advising and implementing policies approved by the Management Committee. Managing risk will involve ensuring controls are in place and are regularly monitored, and where documented on the Major Risk Record (MRR) further action is implemented. In addition the Director is responsible for alerting the Management Committee on new identified risks that are deemed to have a potential serious impact on ESPO business.
- The Organisation makes conservative and prudent recognition and disclosure of the financial and non-financial implications of risks.
- The Director and Assistant Directors are responsible for ensuring good risk management practice within their divisions
- The Director will report to the Management Committee annually on the Corporate Risk Register.

Role of the Management Committee

1. The Management Committee has a fundamental role to play in the management of risk. Its role is to:
 - i) Influence the culture of risk management within the Organisation.
 - ii) Determine the appropriate risk appetite or level of exposure for the Organisation.
 - iii) Approve major decisions affecting the Organisation's risk profile or exposure.
 - iv) Ensure that a Corporate Risk Register is established, including details of the actions taken to mitigate the risks identified.
 - v) Consider risks attached to proposals for new, or changes to, policies and service delivery arrangements
 - vi) Annually review the Organisation's approach to risk management and approve changes or improvements to key elements of its processes and procedures.

Role of the Director and Leadership Team

2. Key roles of the Director and Leadership Team are to:
 - i) Establish, gain approval from the Management Committee and implement policies on risk management and internal control i.e. to ensure that an adequate risk management framework and associated control environment is in place. Liaise with the servicing authority on all aspects of risk management.
 - ii) Identify, evaluate, and manage the fundamental strategic risks faced by the Organisation for consideration by the Management Committee in line with the six strategic planks outlined in the ESPO strategy dated March 2015.
 - iii) Determine the level of risk appetite, currently set at 10.
 - iv) Ensure regular updating of the Corporate Risk Register and review MMRs.
 - v) Identify, evaluate, and manage all operational and strategic risks faced by the Organisation. These should be clearly identified as such on the organisation's Corporate Risk Register.
 - vi) Business Continuity and Procurement, Health and Safety – sit at Operational risk register level but flow into the Corporate Risk Register because of their significance. The responsibility for managing these is still at Assistant Director level but with scrutiny and challenge by Director as to movement on actions.
 - vii) Provide information in a timely manner to the Management Committee on the status of risks and controls. Timing will depend on the level of risk, but at least annually, and where addition or new risks are evaluated and escalated (such as new procurement projects) then these will be approved prior to sign off.
 - viii) To maintain awareness of and promote the risk management policy to all relevant staff (use of key documents published via intranet).

- ix) Arranging/providing risk management training as appropriate
- x) Ensure synergy with other “risk” systems, e.g. Health and Safety, business continuity and project management
- xi) Undertake an annual review of effectiveness of the system of internal control and provide a report to the Management Committee.

Role of Procurement Management

3. Key roles of Procurement Management are to:

- i) Maintain awareness of risk management principles and take responsibility for managing risk within their own working environment.
- ii) Apply risk management to those risks requiring further action, particularly new developments and “procurement or project” work.
- iii) Maintain, and update where appropriate any project records of risk assessments undertaken and resulting action plans.
- iv) Reporting systematically and promptly to their managers or Leadership Team any perceived new risks or failures of existing control measures.

Risk management as part of the system of internal control

- 4. The system of internal control incorporates risk management. This system encompasses a number of elements that together facilitate an effective and efficient operation, enabling the Organisation to respond to a variety of operational, financial, and commercial risks. These elements include:

a. Policies and procedures

Standard Operating Procedures and policies are used to improve business efficiencies and reinforce a standard approach to documents that are used externally, whilst at the same time underpinning internal control processes. The policies are approved by the Leadership Team and implemented and communicated by senior management to staff. Written procedures support the policies where appropriate.

b. Reporting

Comprehensive reporting is designed to monitor performance, reviewing key risks where appropriate. Decisions to rectify concerns are made at regular meetings of the Leadership Team, and the Management Committee if appropriate. Market information is vital for developing management knowledge as a core element of the business. The mastering of such information through the monitoring of the external environment goes hand-in-hand with a comprehensive risk management process. Capturing and centralising such market intelligence will lead to developing better expertise and organisational capabilities, improving the quality of decision making, and enable a quick response to changing external conditions.

c. Business planning and budgeting

The business planning and budgeting processes are used to set targets, agree action plans, and allocate resources in order to achieve the long term objectives of the organisation articulated in the MTFS for 2017-2019. Progress towards meeting business plan targets is monitored weekly/monthly depending on individual targets.

d. High level risk framework (strategic risks)

This framework is compiled by the Leadership Team and helps to facilitate the identification, assessment and ongoing monitoring of risks fundamental to the Organisation. These are strategic risks that might impact on the high level, medium to long-term, goals and objectives of ESPO, together with those cross cutting issues that have potential to impact significantly on service delivery, business continuity and profit generation.

The Corporate Risk Register document is appraised annually in December with emerging risks being added as required, and improvement actions and risk indicators are monitored regularly.

e. Operational risk management

These have been considered as the following:

- Health and Safety (Office, warehouse, transport);
- Procurement Projects;
- Business Continuity.

The latter has both strategic and operational aspects and has been considered in **separate documentation**.

- i) Health and Safety is discussed quarterly by the Leadership Team in conjunction with risk management. It is chaired by the Director and attended by the full Leadership Team and the Health, Safety and Wellbeing Advisor. Meeting every six weeks, the Joint Consultative Committee acts as a conduit to the quarterly risk management meeting and is chaired by the Assistant Director – Operations and attended by the HR Advisor, trade unions, staff representatives and Health, Safety and Wellbeing Advisor. The function of the two groups is to review the measures taken to ensure the health and safety at work of employees. One of the main objectives of these groups is to promote co-operation between staff and management in instigating, developing and carrying out measures to ensure the health and safety at work of the employees.

Specific Objectives are:

- The study of accident and notifiable disease statistics and trends, so that reports can be made to management on unsafe and unhealthy conditions and practices, together with recommendations for corrective action;
- Examination of safety audit reports on a similar basis;
- Consideration of reports and factual information provided by inspectors of the enforcing authority appointed under the Health and Safety at Work Act;
- Consideration of reports which safety representatives may wish to submit;

- Assistance in the development of works safety rules and safe systems of work;
 - A watch on the effectiveness of the safety content of employee training;
 - A watch on the adequacy of safety and health communication and publicity in the workplace;
 - The provision of a link with the appropriate enforcing authority;
 - To fulfil the employer's legal duty to consult with Health & Safety Representatives;
 - To discuss and review the effect of new Health and Safety law and the organisation's proposals for implementing the new law;
 - To monitor and review the effectiveness of the organisation's safety policy;
 - To develop and agree health and safety standards and procedures applicable to the workplace;
 - To review the organisation and administration of any occupational health and safety services provided by the organisation.
 - Review of insurance or other such claims and recommend measures to reduce the likelihood of future claims
- ii) Procurement Projects. As ESPO has developed its procurement expertise it has moved (on behalf of customers) into larger more complex contracts. In response to this ESPO has developed a business case process that requires both reward and risk to be evaluated and assessed as part of the compliance process. Risk are assessed at a Pre-Procurement Panel and at Contracts Panel (contract award) and escalated where necessary to Leadership Team and then to Committee. Supporting the tender process are a series of Standard Operating Procedures and a library of standard documentation. Procurement practice is discussed at the Chief Officers Group.
- iii) Business Continuity. A complete rewrite of our Business Continuity documentation has been undertaken by our recently appointed Business Continuity consultants, Phoenix. It was considered important to appoint experts in the field to update our existing documentation. This policy is reviewed on a quarterly basis.
- iv) The risks within the change programme have now been incorporated in to the CRR. Alongside the risks within the CRR, any risks that have a residual score of 10 or more are reviewed on a quarterly basis. Any new risks are added and obsolete risks are deleted from the register.

The following statements may be applicable for inclusion within the policy:

f. *Fraud and Corruption*

The organisation is set against fraud and corruption and is committed to an effective Anti-Fraud and Corruption Strategy. Identification and addressing the risk of fraud and corruption are a key element within this risk management strategy. All members of staff are also required to undertake a mandatory course on fraud and Awareness to facilitate the above.

g. *Auditors*

LCC Internal Auditors are required to report to the Director and Consortium Treasurer on internal controls and alert Management to any emerging issues. In addition, the Director and Treasurer oversee internal audit, external audit and management as required in their review of internal controls. They are therefore well-placed to provide advice to the Management Committee on the effectiveness of the internal control system, including the Organisation's system for the management of risk.

h. *Internal audit programme*

Internal audit is an important element of the risk management process. Apart from its normal programme of work, internal audit is responsible for aspects of the annual review of the effectiveness of the internal control system within the organisation.

i. *External audit*

External audit provides feedback to the Management Committee on the operation and adequacy of the internal financial controls reviewed as part of the annual audit.

j. *Third party reports*

From time to time, the use of external consultants will be necessary in areas such as marketing, IT systems and human resources. The use of specialist third parties for consulting and reporting can increase the reliability of the internal reporting systems.

k. *Chief Officer Group (COG)*

The COG consists of chief officers from all member authorities who meet regularly with the Organisation's senior management. The COG provides advice and guidance to facilitate the identification and assessment of procurement risks to the Organisation.

Annual review of effectiveness

5. The Management Committee is responsible for reviewing the effectiveness of internal control of the Organisation, based on information provided by the Director, Treasurer and auditors. Its approach is outlined below.
6. For the fundamental risks identified, the Director will seek the Management Committee's approval on the results of:
 - A review of the Organisation's prior year record on risk management and internal control

- A Review of the risk profile for the coming year and of the adequacy of current internal control arrangements.
 - A recommendation, if required, for investment in further control arrangements.
7. In determining recommendations the Management Committee, the Director will consider the following aspects.
- a. Control environment:
- The Organisation's objectives and its financial and non-financial targets
 - Organisational structure and calibre of staff available.
 - Culture, approach, and resources with respect to the management of risk
 - Delegation of authority
 - Public reporting.
- b. On-going identification and evaluation of fundamental risks:
- Timely identification and assessment of fundamental risks
 - Prioritisation of risks and the allocation of resources to address areas of high exposure.
- c. Information and communication:
- Quality and timeliness of information on fundamental risks
 - Time it takes for control breakdowns to be recognised or new risks to be identified.
- d. Monitoring and corrective action:
- Ability of the Organisation to learn from its problems
 - Commitment and speed with which corrective actions are implemented.
8. The Director prepares a report of his review of the effectiveness of the Organisation's internal control system within the Annual Statement of Accounts and presented to the Management Committee for consideration and approval (normally the Committee meeting in June), prior to the final approval of Accounts in September.

RISK MANAGEMENT GUIDE

Background

ESPO Management and staff have been facing and managing risk for over thirty years resulting in a successful organisation that has exploited opportunities to become one of the UK's largest local authority purchasing consortiums.

However, in recent years there has been increasing focus on the corporate governance arrangements of both public and private companies with the aim of achieving greater transparency. This requirements is reinforced by the recommendation that local authorities should make a statement as to how they have complied with their local governance code, and how they have monitored the effectiveness of their corporate governance arrangements in their annual Statements of Accounts.

Risk Management provides assurance that:

- objectives are more likely to be achieved;
- damaging events will not happen or are less likely to happen
- beneficial events will be or are more likely to be achieved
- make more informed decisions
- prevents injury, damage and losses and reduces the cost of risk.

The risk management method enables:

- the identification and evaluation of risks;
- helps in setting acceptable risk thresholds;
- the identification of controls against such risks; and
- helps identify indicators that give early warning that a risk is becoming more serious
- embraces and exploits opportunities to explore new innovative ways of working and identifying opportunities to reduce costs and improve outcomes
- Improve co-ordination and consistency of service delivery
- Supports sustainable improvements in our activities and the achievement of value for money.

Risk Definition

Risk is the threat or possibility that an action or event will adversely or beneficially affect the organisation's ability to achieve its objectives.

This definition links risk to achieving the strategic and business objectives and also identifies that risk management is not just about recognising and mitigating negative risks but also identifies risk-taking opportunities that may lead to positive benefits.

Risk can be seen as short term, such as an event, or a conjunction of events harmful to both tangible and intangible assets. It can be also be long term where there is a gradual disconnect between the organisation and its external environment.

Risk management is having the knowledge both to anticipate potential risk, but also to understand how through choice such risks can be minimised. ESPO's aim is to reduce the effects of risk, and/or increase its ability to react by maximising its flexibility through responding whilst maintaining organisational stability.

Risk management therefore not only includes the ability to anticipate forward events through the marshalling of data into intelligence but also involves developing the organisation's capabilities through continuous improvement.

Internal controls

Internal controls are a range of regulations, procedures and policies the organisation uses to manage its work and any additional controls or mitigating actions taken to deal with a particular situation.

The aim of risk management is to ensure that these controls are effective in identifying, evaluating, monitoring and minimising the risks ESPO faces in its day-to-day activities or any future ventures.

The level of risk faced by an organisation before any internal controls are applied is known as the gross or raw risk.

The level of risk faced by ESPO after internal controls have been applied is known as the net or residual risk. Controls will not eliminate the risk but help us to manage it; therefore this is also known as the organisation's "exposure to risk".

The controls are those management actions taken to deal with a particular risk. A judgement is made on the numerical reduction to the raw risk score to produce the residual risk score.

Risk Indicators provide a series of 'warning lights' which provide early warning that action may be required to mitigate a particular risk through stronger internal controls, or if it is outside ESPO's control, to be aware of it and closely monitor.

ESPO also has to determine where it resides in terms of a spectrum ranging from 'risk-taking' to being 'risk averse'. The amount of risk ESPO is prepared to tolerate before action is required is known as 'risk tolerance'

The Size of Risk - Heat Map represents the ESPO's risk scoring matrix.

The following monitoring varies according to the risk score:

- (a) Residual risk score of 6 or less (low level of risk) should require no mitigating action. However, risk owners should review controls for low risk areas to ensure they are effective and not disproportionate. The risk score should be reviewed annually;
- (b) Residual risk score of 8 to 12 (medium level of risk) should trigger a review of the existing controls, if a new risk, and may require the implementation of additional controls for existing risks. Risks with this score should be reviewed quarterly;
- (c) Residual risk score of 14 to 20 (high level of risk) should trigger a review of the existing controls, may require the implementation of additional controls and the problem may need to be escalated to the Management Committee for consultation. Risks with this score should be reviewed at quarterly.

- (d) Residual risk score of 20 or above (top level of risk) will trigger a review of the existing controls, is likely to require the implementation of additional controls and the problem should be escalated to the Management Committee for consultation. Risks with this score should be reviewed quarterly.

ESPO's Corporate Risk Register has a summary table ranking each risk according to its score with detailed Major Risk Record analysis sheets attached including information on the above.

The Management Committee will receive reports, at least annually, on risk management arrangements and assessments. This will include where appropriate any revised policy, and the corporate risk register. Any changes to risk levels highlighted as a result of the Health and Safety and the management of Business Continuity will be reported upon through the corporate risk register together with a report on risk management included within the annual statement of Accounts.

Risk Management Process

The stages are summarised below with a commentary on the arrangements at ESPO.

Identify the risks

This is the first stage to use where the risks that may affect a particular new activity, existing operational activity or project are listed. At this point opportunities can be considered and risks grouped. This work forms the basis of the risk register.

Risks can be classified as Internal or External with the latter being categorised as:

- Reputation
- Financial Loss
- People
- Regulatory
- Business Objectives

IRM Risk Wheel

This process is facilitated by the Major Risk Record (MRR) Form which forms the basis of the Corporate Risk Register.

Identify probable risk owner(s) and a risk co-ordinator

The risk owner assesses the risk, detailing how actions can be taken and by when to reduce the likelihood and severity of the risk to an acceptable level. All actions detailed need to consider and detail who is do what and when. If monitoring or reporting is involved the frequency and responsibility for such reports should also be included.

- All risk assessments should be dated (i.e. date of completion) and certified by the risk owner.
- Responsibility and an action completion date should be assigned to all actions on the MRR record.
- Where risks are high, above a residual score of 10, with further action required, action taken and progress on further action taken should be monitored by the leadership team on a quarterly basis. Any new risks are added and obsolete risks are deleted.

All Risk owners for those risks that affect the whole organisation will be the Leadership Team. At a project level the risk owner should be the project manager. Risk owners should be added to the risk register.

The risk co-ordinator collates all the risks to create a risk register and manages the risk reporting process.

Evaluate the risks

The risks should then be evaluated for impact and likelihood. An assessment of the timing of the risk can also be made.

The scales used for impact and likelihood are as follows:

Impact:

1. Negligible
2. Low
3. Medium
4. High
5. Very High

Likelihood:

1. Very Low
2. Low
3. Medium
4. High
5. Very High

The combined scores on a 5 x 5 matrix will give scores ranging from 1 to 25 depending on the severity of the risk. These numbers are indicative only as the process is not an exact science but most importantly it assists in thinking about the risk.

The total risk score divisions are as follows:

- 1 – 6 - Low
- 8 - 12 - Medium
- 14 - 20 - High
- Over 20 - Very high

The Size of Risk - Impact Guide provides examples for likelihood, impact and total risk score. Once this has been completed the risks are prioritised and ranked according to score and proximity. The risk register is updated accordingly.

Identify suitable responses to risk

Where needed, a range of practical responses to each significant risk on the risk register is be identified and recorded on the register.

Range of responses (controls) to a risk:

- **Reduce** - take action to reduce either the probability of the risk developing further, or its impact.
- **Accept** - when the probability and impact are low producing a total risk score below 7, or when it would be too expensive to mitigate a risk.
- **Transfer** - transferring the risk to a third party, e.g. insurance.
- **Terminate** - identifying actions to eliminate the risk such as withdrawing from the activity.
- **Contingency** - a plan of action to be implemented when a risk develops further or passes through a risk threshold.
- **Prevent** - identifying measures to prevent a risk having an impact on an organisation.

Responses are proportional to the risk and mapped against the risks on the risk register.

Implement responses

The most appropriate responses to each risk will be determined and implemented by ESPO Management in order of priority. Approval for additional earmarked funding required to implement responses may be requested from the Management Committee. Responses when implemented should bring the most serious risks below the risk tolerance thresholds. Once implemented the responses will be monitored by Management and amended as necessary

The risk tolerance threshold score has been set at 10 or less. The exact meaning of this value is somewhat subjective and this is will be reviewed annually to assess whether it is appropriate as a methodology to highlight the key risk areas. All strategic risks even with a score less than 10 will appear on the register. Those that are red will be prioritised and will be considered quarterly by the Leadership team.

Assurances about effectiveness

The risk responses implemented are assessed for effectiveness in keeping the risks within agreed tolerance levels by regular monitoring of the risk indicators. Internal and external audit reports provide further assurance on effectiveness.

Embed and review

The risk management arrangements will be reviewed on an annual basis including a review of the risk register and a report will be produced for the Management Committee in June. The report will assess the effectiveness of the measures to control risk with recommendations for improvement or development.

All risks are reviewed quarterly by the relevant Assistant Directors for their operational areas, but those risks above the risk appetite (>10) should feature in the CRR for review and monitoring by the Leadership Team with subsequent reporting to Chief Officer Group and Management Committee.

The Annual Governance Statement (June Committee) will also include a review of Risk Management policy and processes.

Size of Risk - Impact Guide

This Impact Guide is designed to assist in determining the scores applied to any risk. In the application within ESPO a 5 x 5 scale for impact and likelihood is used.

Impact ranges from Negligible (1) to Very High (5). Likelihood ranges from Very Low (1) to Very High (5). The combined scores on a 5 x 5 matrix will give scores ranging from 1 to 25. The scoring will be determined on the basis of the Leadership Team’s opinion of the residual risk after taking account of their perception of the effectiveness of the existing controls. These numbers are indicative.


The combined risk score can then be calculated to determine the severity of the risk on the following scale:

- ▶ 1 - 6 Low
- ▶ 8 - 12 Medium
- ▶ 14 - 20 High
- ▶ Over 20 - Very high

Impact Grid

The Impact Grid is the scoring matrix referred to above with risk thresholds applied according to the total risk score. Applying colours in this way is sometimes known as the 'traffic light' method. This gives 3 levels of risk denoted by colours in this case - red being the most serious; yellow being the middle level; and blue the least serious.

If, upon review, a risk crosses one of the thresholds it should trigger either an increase or decrease in the internal controls applied to it.

| | | | | | | | |
|----------|---|------------|----|----|----|----|-------------------------------------------------------------------------------------|
| Severity | 5 | 5 | 10 | 15 | 20 | 25 |  |
| | 4 | 4 | 8 | 12 | 16 | 20 | |
| | 3 | 3 | 6 | 9 | 12 | 15 | |
| | 2 | 2 | 4 | 6 | 8 | 10 | |
| | 1 | 1 | 2 | 3 | 4 | 5 | |
| | | 1 | 2 | 3 | 4 | 5 | |
| | | Likelihood | | | | | |

Size of Risk – Impact Guide

The Impact guides are only for guidance and are not intended to be prescriptive. It should be the worst-case scenario that is usually used to rate the risk.

| Level | Severity | Reputation | Financial (per | People | Regulatory | Business Objectives |
|-------|-------------------|---------------------------------------------------------|-----------------------------|-------------------------|------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Negligible | Internal | Less than £50,000 | No | No | <ul style="list-style-type: none"> No impact |
| 2 | Low | Local (Minor adverse publicity) | Between £50,000 - £250,000 | Minor Injury | No Consequence | <ul style="list-style-type: none"> Loss of a minor contract |
| 3 | Medium | Local or limited adverse publicity | Between £250,000 - £500,000 | Major reversible injury | Limited regulatory consequence | <ul style="list-style-type: none"> Major IT Project is late Loss of a major contract |
| 4 | High | Negative headlines in national press | Between £500,000 - £750,000 | Serious Injury | Significant regulatory consequence | <ul style="list-style-type: none"> Member authority leaves Consortium ESPO IT systems fail and cannot be recovered Major loss of sales due to staff shortages in the warehouse e.g. Flu pandemic |
| 5 | Very High | Sustained negative headlines in regional/national press | Greater than £750,000 | Fatality | Substantial regulatory consequence | <ul style="list-style-type: none"> Major buildings fire resulting in closure Sustained failure to recruit staff |

Size of Risk – Likelihood

| Level | Descriptor | Likelihood | Description |
|-------|-------------------|------------|---------------------------------------------|
| 1 | Negligible | 2% Likely | May occur only in exceptional circumstances |
| 2 | Low | 5% Likely | Not likely to occur in normal circumstances |
| 3 | Medium | 10% Likely | Could occur at some time |
| 4 | High | 20% Likely | Will probably occur in most circumstances |
| 5 | Very High | 50% Likely | Is expected to occur in most circumstances. |

133

This page is intentionally left blank

| RISK REF: | LINK TO STRATEGY | RISK TYPE | OWNER | SUB-OWNER | DATE IDENTIFIED | LAST REVIEWED | DESCRIPTION | ISSUED/ REVISED DATE: Rolling as Last Review MRR | | | RESIDUAL RISK RATING FOLLOWING | | | COMMENTS | | | |
|-----------|----------------------------|------------------|----------------|---------------|-----------------|---------------|---------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|----------------|--------------------|--------------------------------|----------------|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|--|--|
| | | | | | | | | RAW RISK RATING PRIOR TO CONTROL | | | EXPECTED IMPACT | | | | LIKELIHOOD | | |
| | | | | | | | | EXPECTED IMPACT (A) | LIKELIHOOD (B) | RISK SCORE (A X B) | EXPECTED IMPACT (A) | LIKELIHOOD (B) | RISK SCORE (A X B) | | | | |
| 8 | Procurement and Compliance | Governance Risk | John Doherty | | 2007-02-19 | 2017-01-17 | Governance failures by Management | 5 | 3 | 15 | 5 | 2 | 10 | Servicing authority requirements set out in Consortium agreement. Regularly reviewed, and subject to audit. The Annual Governance Statement and Consortium Agreement mitigate the risk of governance failures. | | | |
| 25 | Customer | Operational Risk | John Doherty | | 2012-01-12 | 2017-01-17 | Increased competition | 5 | 4 | 20 | 5 | 2 | 10 | | | | |
| 34 | Operational | Operational Risk | John Doherty | | 2014-01-15 | 2017-01-17 | Business Continuity through Fire, Accident, Building Access, Infection etc | 5 | 3 | 15 | 4 | 3 | 12 | Mitigated by Business Continuity Policy and IT recovery annual dress rehearsal. | | | |
| 38 | Procurement and Compliance | Business Risk | David Kwiatek | David Kwiatek | 2015-02-02 | 2017-01-16 | Optima (potential failure/customer impact) | 5 | 4 | 20 | 4 | 3 | 12 | Further Action Senior board-to-board relationship, first meeting 08/02/17 | | | |
| 46 | Procurement and Compliance | Business Risk | Kristian Smith | David Kwiatek | 2015-03-25 | 2017-01-16 | Loss of income through not recovering all we are entitled to through supplier rebates, including on collaboration supply arrangements | 5 | 3 | 15 | 5 | 2 | 10 | Further Action Incorporated some progress/actions | | | |
| 63 | Financial | Business Risk | John Doherty | | 2016-06-21 | 2017-01-17 | Exiting EU | 4 | 5 | 20 | 3 | 5 | 15 | | | | |
| 64 | Procurement and Compliance | Business Risk | Kristian Smith | David Kwiatek | 2016-06-30 | 2017-01-16 | Energy Contracts financial risk exposure regarding variations in volume purchased/consumed | 5 | 3 | 15 | 4 | 3 | 12 | Reviewed no change | | | |
| CPR003 | Business developments | Operational | John Doherty | | 2015-08-01 | 2017-01-17 | Capacity to focus on development | 5 | 3 | 15 | 5 | 2 | 10 | | | | |

Strategy

Customer
Procurement and Compliance
Operational
People
Financial

Risk Type

Reputation
Financial
People
Regulatory
Business Objectives



MANAGEMENT COMMITTEE – 28 FEBRUARY 2017

PROGRESS UPDATE

REPORT OF THE DIRECTOR

Purpose of Briefing Note

1. The purpose of this update is to inform Members of the actions and progress made since the last Management Committee meeting held on 30 November 2016.

Overall Financial Performance

2. Overall financial performance to December 2016 year to date is outlined below:
 - Total sales to the end of December are £60.3m compared to the prior year £64.5m. The largest variances come from gas (£3.7m) and 'directs' (£0.7m). Catalogue sales excluding gas are £50.8m which is down on last year by 1.0%, and 1.8% against budget.
 - Rebate income is £3.5m which is £0.1m up on budget.
 - Total gross margin is £15.4m, which is up on budget by £0.4m and £1.0m up on the prior year. This is due to the good performance of stores margin, underpinned by effective sourcing activity on key lines.
 - Total expenditure is £13.1m compared to a budget of £13.2m, a saving of £0.1m or 0.8%.
 - Consequently, surplus is £2.3m compared to a budget of £1.8m, a positive variance of £0.5m. We are optimistic about achieving the £3.9m budget surplus.
3. Key figures underlying the total sales to December 2016 are as follows:

| COMBINED PRELIMINARY RESULTS | YEAR TO DATE | | |
|----------------------------------|-----------------|-----------------|-----------------|
| | ACTUAL | BUDGET | PRIOR YEAR |
| | £000 | £000 | £000 |
| SALES | | | |
| STORES | 32,384.8 | 32,633.9 | 32,482.8 |
| DIRECT | 13,955.1 | 14,788.5 | 14,645.7 |
| CATALOGUE ADVERTISING | 798.6 | 873.8 | 800.7 |
| REBATE INCOME | 3,475.4 | 3,314.0 | 3,348.5 |
| MISCELLANEOUS INCOME | 201.9 | 127.5 | 68.3 |
| Total Sales Excluding Gas | 50,815.7 | 51,737.7 | 51,346.1 |

4. Gas sales have performed as follows:

| COMBINED PRELIMINARY RESULTS | YEAR TO DATE | | |
|------------------------------|--------------|----------|------------|
| | ACTUAL | BUDGET | PRIOR YEAR |
| | £000 | £000 | £000 |
| GAS | 9,506.2 | 15,807.7 | 13,180.9 |

The reason for the fall in gas sales compared to the prior year is mild weather and reduced wholesale prices. Below is a comparison of kWh invoiced

- April to December 2015: 494,936,385 kWh invoiced
- April to December 2016: 420,148,741 kWh invoiced (-15%)

5. Additionally, the contract price of gas was reduced by 20% with effect from 1 April. The decrease in volume and gas prices does not however impact our margin which is a fixed price and based on number of meters which are 3,548 at December 2016. Year on year, there has been a net decrease of 4% principally down to Nottingham creating its own energy company. The impact on income has been offset by increasing per meter charges.

6. Three significant new customers were added to the portfolio last month (Coventry City Council, Derby City Council (council buildings and schools under Local Authority control) and Calico Housing). The income for these will start to flow through this month as all gas and electricity income is now settled monthly with the supplier, Total Gas &

Power.

7. The balanced scorecard for December is attached as Appendix 1.

ESPO Operational Progress

8. To December 2016, nine months of the financial year 2016/17, Operations has processed and delivered a total of £32.4m of customer orders making 265,829 on-time deliveries weighing 11.42m kg. Warehouse picking was performed at a rate of 35 lines per hour.
9. The night shift is being re-purposed from a picking shift to a replenishment shift, which means it will focus on moving stock from the rear stage to the pick face. This will keep the shift in place to underpin the peak period, but will see a small number of staff being offered voluntary redundancy or being re-deployed to daytime rotating shifts.
10. An action plan for the nightshift restructuring commenced in December 2016 having been agreed with the unions at the Joint Consultative Committee. The consultation process is ongoing and the new structure will come into effect on 1 April 2016.
11. A benchmarking exercise was undertaken to determine whether the current market premium (10% enhancement) for warehouse operatives working a rotating 6am to 2pm and 2pm to 10pm shift should continue in line with the current policy. The local labour market reflects a higher rate of pay than at ESPO and therefore it has been formally agreed that this 10% enhancement should continue.
12. This benchmarking exercise also revealed that employees working a fixed 2pm to 10pm shift were receiving less than average pay and therefore those staff will receive an additional 5% of salary.
13. These market premiums will continue for a period of two years at which time another benchmarking exercise should be undertaken to determine if the enhancements are still required.
14. The transport planning team upgraded its scheduling system, Roadshow, to the latest version. The new functionality will reduce the time it takes to schedule vehicles and also make the schedules visible to the warehouse planning team earlier in the day. This will enable picking staff plans to be created to meet the need. In time, it is envisaged that customer orders can be processed earlier allowing the sales team to offer enhanced service to key customers.
15. Customer sentiment measured by the FeeFo feedback service was 96%. The team has handled 81,033 calls in the financial year to date. This is down 6,381 on last year. We are encouraging customers to transact on-line with us for placing orders and making queries.

16. The stock optimisation team maintained product availability of 99.34% and through close consultation with the buying team have been steadily reducing the number of products that have been discontinued. Stock value was £4.3m with a stock-turn of 7.92.

Staffing

17. There has continued to be a significant reduction in sickness absence over the last twelve-months from 11.04 to 9.71 days lost per FTE, a decline of 13.7%. All sickness absence at ESPO continues to be managed in line with the Attendance Management policy and procedure.
18. The ESPO Leadership Team signed up to the creation of a bespoke induction pack that commenced in January. The new induction ensures starters are fully aware of ESPO's policies, procedures, expectations and key service areas. The feedback received from our first HR and Corporate Inductions has been good.
19. An ESPO exit questionnaire process was implemented in April 2016. High-level analytics gathered over the last six months identify key trends and has enabled collation of suggestions for improvement. This information will be used for workforce planning.
20. HR and Learning & Development have recently delivered training on Attendance, Probation, and Capability management processes and continues to support individual managers on employee relations issues. The Learning & Development Advisor is currently putting in place a plan to ensure all staff complete mandatory training.
21. The Government has confirmed the introduction of an Apprenticeship Levy from April 2017 which is a fundamental change to the way Apprenticeships in England are funded. As employees of the Servicing Authority, ESPO will observe the Apprenticeship Levy in line with Leicestershire County Council HR policy and as such, ESPO will be required to pay 0.5% of its payroll into this levy which equates to £50k per year. The Government has also set a target for organisations to have at least 2.3% of its workforce being employed as apprentices. For ESPO, this would equate to employing apprentices or providing apprenticeship programmes for seven people per year. The Learning & Development Advisor is currently working with ESPO departments to ensure that ESPO meets this target in the 2017/18 financial year.

ESPO Risk and Governance Update

Health, Safety, Wellbeing and Facilities Management

22. There have been no RIDDOR reportable incidents in the third quarter. There have been a total of seven reported accidents. Injuries included strain/sprains (2), cuts (3), and slips/trips/falls
23. A new method for reporting near misses and potential hazards has been implemented. Subsequently, the number of reports has risen alongside staff

awareness, ensuring that best practice is maintained across all areas of the warehouse. Each identified risk is given a named owner who ensures that remedial action is taken followed by awareness raising, training and solution implementation.

24. In January, a trespasser was discovered on site. There was no damage or theft but it has instigated a review of options for improving security. These include improvements to the staff entrance doors, additional swipe card access installations from the warehouse, and audible sounders when door locks are forced.
25. Improvements carried out in the quarter which impact health & safety include:
 - Installation of a new access control system following failure of the previous system, and subsequent tidying up of leavers' records.
 - Full refurbishment of the warehouse sprinkler system water storage tank following a leak.
26. Quotes are currently being obtained for repairs to the roof which are estimated to be in the region of £80k.
27. ESPO is considering the installation of an electric car charging station to encourage the future use of electric vehicles. This is a direction of travel already being shown by many councils (including Leicestershire County Council) and it would also set an example in our community, encourage staff to consider electric vehicles in future purchases and leases, and is supportive of the Servicing Authority's Environment Strategy to:
 - Reduce greenhouse gas emissions to mitigate the rate of climate change;
 - Reduce polluting emissions from its operations and from the local transport network;
 - Support action to create a healthy environment with reduced pollution and contamination.
28. The estimated cost of installation is £10k to include contingency. Electrical surveys have already been carried out and the existing infrastructure is sufficient to support this development.

Corporate Risk Register

29. ESPO Leadership Team held its quarterly review of Major Risk Records (MRRs) on 17 January 2017.
30. There are eight high risks which are reviewed monthly:
 - MRR 08 Potential governance failures by management
 - MRR 25 Increased competition
 - MRR 34 Robust business continuity in the event of an emergency
 - MRR 38 Potential failure of the Optima implementation

- MRR 46 Loss of income through not recovering all we are entitled to through supplier rebates, including on collaboration supply arrangements
 - MRR 63 Implications of exiting the European Union
 - MRR 64 Energy Contracts financial risk exposure regarding variations
 - CPR 03 Capacity to focus on development
31. CPR 03 has recently become high risk as it is identified that there are areas of the business which require additional capacity in order to focus on the development of key initiatives. These initiatives are required to enable ESPO to continue to grow its surplus in future years. It is anticipated that resource will be allocated as required.
32. Previously a high risk, MRR 60 on the non-delivery of the business development agenda to MTFS has been mitigated by resetting the MTFS targets, which acknowledges a shallower pace of surplus growth in the core business and overlays the net impact of development initiatives when achieved.

Resources Implications

33. None arising directly from this report.

Recommendation

34. Members are asked to note and support the contents of this report.

Officer to Contact

John Doherty, Director
J.Doherty@espo.org
0116 265 7931

Appendices

Appendix 1: Balanced Scorecard

Management Summary Dec 16

Management Summary

| | Actual | Budget /LY | Var | YTD Actual | YTD Var |
|---------------------------------------------|------------|------------|------------|-------------|----------|
| Stores Sales | £2,209,902 | £2,210,109 | ↓ -0.0% | £32,384,754 | ↓ -0.8% |
| Direct Sales | £1,129,851 | £1,260,775 | ↓ -10.4% | £13,955,072 | ↓ -5.6% |
| Rebate plus fee income | £517,500 | £281,000 | ↑ 84.2% | £3,475,458 | ↑ 4.9% |
| Total Sales (inc Gas & Rebates) | £5,336,719 | £6,370,658 | ↓ -16.2% | £60,321,931 | ↓ -10.7% |
| Stores Margin % | 27.79% | 26.77% | ↑ 1.03pp | 27.22% | ↑ 1.22pp |
| Directs Margin % | 12.68% | 12.78% | ↓ -0.09pp | 13.10% | ↑ 0.32pp |
| Total Gross Margin inc Consumables Cost | £1,327,792 | £1,087,860 | ↑ 22.1% | £15,381,299 | ↑ 2.9% |
| Total Expenditure | £1,437,984 | £1,353,717 | ↓ -6.2% | £13,087,162 | ↑ 0.8% |
| Surplus | -£110,192 | -£265,857 | ↑ £155,666 | £2,294,137 | ↑ 30.8% |
| Net Profit Margin % | -2.06% | -4.17% | ↑ 2.11pp | 3.80% | ↑ 1.21pp |
| Operations cost as a proportion of sales | 34.2% | 31.3% | ↓ -2.94pp | 20.5% | ↑ 0.32pp |
| Expenditure as a proportion of Gross Margin | 108.3% | 124.4% | ↑ 16.14pp | 85.1% | ↑ 3.18pp |

Full year up to Nov 16 data....

| | No. FTE at Nov 16 month end... | Cum No. days lost | No. of Days Lost per FTE TY Cum |
|---------------|-----------------------------------|----------------------|------------------------------------|
| Sickness Rate | 314 | 3,364 | 11 |

MOV

| | TY YTD | LY YTD | Var |
|----------------------------|---------|---------|-----------|
| AOV | £139.59 | £124.73 | ↑ £14.86 |
| Prop of orders over £15 | 96.2% | 84.7% | ↑ 11.50pp |

This page is intentionally left blank

By virtue of paragraph(s) 3, 10 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank

By virtue of paragraph(s) 3, 10 of Part 1 of Schedule 12A of the Local Government Act 1972.

Document is Restricted

This page is intentionally left blank