

**CONTRACT PROCEDURE  
RULES**

**Eastern Shires Purchasing Organisation  
(ESPO)**

# **Contract Procedure Rules**

**2015-16**

## 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 County Solicitor ("the County Solicitor") 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 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) 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.

## **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 County Solicitor.
  - (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 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.

## **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".

## 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)		Record details. (If three Quotations cannot be obtained a record of the reasons

Estimated Contract Value		Procurement Process	Minimum Contract Opportunity Publication	Documentation
From (£)	Up to (£)			
				<p>for this must be maintained and forwarded to the appropriate Procurement Service Manager).</p> <p>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<sup>1</sup>.</p>
Above £25,000	Up to but not including £164,176	<p>Seek written Quotations (to be based on a Request for Quotation document where practical)</p> <p>For exceptions see Rule 6 (b)</p>	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 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.

<sup>1</sup> 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.

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**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 Standardised Pre-Qualification Questionnaire must be used for the selection criteria;
- (c) Selection criteria must be included in the evaluation process where applying the Open Tendering procedure (Rule 15) or must be the only criteria used for the shortlisting methodology where applying the Restricted procedure (Rule 16).

**RULE 13*****Award Methodology and Evaluation Criteria***

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

**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).

## **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 Standardised Pre-Qualification 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 County Solicitor and the Director of Corporate Resources.

*[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.]*

## **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 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 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 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:
  - (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 County Solicitor 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 County Solicitor 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 an insurance policy, 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 County Solicitor shall be under seal in the form prepared or approved by him or her.
- (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.

**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 County Solicitor.
- (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:
  - (i) that new suppliers may be added to the Framework Agreement;
 and
  - (ii) how many suppliers can apply to be added to the Framework Agreement; and
 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.

- (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.

### **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 County Solicitor.

**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 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.

**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 "County Solicitor" is the County Solicitor of the Servicing Authority, Leicestershire County Council.
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 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 section.
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. "Standardised Pre-Qualification Questionnaire" means a questionnaire that complies with the Crown Commercial Service statutory guidance relating to Pre-Qualification 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) (excluding Rule 10(b) (vi)) 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 County Solicitor 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]**

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