

## SCHEDULE 1

### CONSTITUTION OF THE ESPO MANAGEMENT COMMITTEE

**This Constitution comprises of:**

- Constitution of the ESPO Management Committee
- Appendix 1:** Terms of Reference of the ESPO Finance and Audit Subcommittee
- Appendix 2:** Terms of Reference of the ESPO Chief Officers' Group
- Appendix 3:** Delegations to the ESPO Consortium Secretary and ESPO Consortium Treasurer
- Appendix 4:** Functions of, and Delegations to, the Director of ESPO
- Appendix 5:** Procedural Standing Orders of the ESPO Management Committee
- Appendix 6:** Financial Regulations of the ESPO Management Committee (including the Standard Financial Instructions)
- Appendix 7:** Contract Procedure Rules of the ESPO Management Committee

#### 1 PURPOSE

- 1.1 The Management Committee shall have overall strategic responsibility for the management oversight and direction of ESPO. The Management Committee is the ultimate decision maker on ESPO and shall exercise those functions set out in this Constitution subject to any delegations as it sees fit.
- 1.2 The purpose of this Constitution is to set out:
  - (a) the functions of the Management Committee and its sub-committees, advisory groups, the Director of ESPO and its officers;
  - (b) how decisions for and on behalf of ESPO are made;
  - (c) who has the authority to make decisions on behalf of ESPO; and
  - (d) the procedure to be followed to ensure that decision making is efficient, transparent and accountable.

## 2 FUNCTIONS

2.1 In addition to those functions specified in this Agreement, the general functions of the Management Committee shall be as follows:

### 2.1.1 Ensuring:

- (a) the successful operation of ESPO as a comprehensive professional purchasing service;
- (b) the effective scrutiny of the ESPO business through:
  - (i) having overall responsibility for monitoring the performance of ESPO and the Director of ESPO (and the Management Committee shall direct what performance monitoring it wants in place) supported by the Servicing Authority, the Director of ESPO, the Consortium Treasurer and Consortium Secretary;
  - (ii) maintaining control over ESPO's trading surplus and ensuring that expenditure through ESPO remains appropriate to its income;
  - (iii) reviewing budget monitoring reports produced by the Director of ESPO; and
  - (iv) considering matters referred to it by its sub-committees, advisory groups, the Director of ESPO or officers;
- (c) In conjunction with the Finance and Audit Subcommittee, the overall management of risk of the ESPO business including requiring the Director of ESPO to have in place policies and procedures to ensure risk management (including for the avoidance of doubt a Risk Management Strategy) and the protection of the ESPO brand;
- (d) that there is proper administration of ESPO's financial affairs;
- (e) that due regard is being paid by the Director of ESPO to the requirements of the Member Authorities in meeting their purchase and supply needs;
- (f) the generation of opportunities for collaboration between the Member Authorities;
- (g) that ESPO has complied with its duties under the Local Government Act 1999 to make arrangements to secure the continuous improvement in the way in which its functions are exercised having regard to a combination of economy, efficiency and effectiveness; and
- (h) ESPO's compliance with all laws and regulations.

### 2.1.2 Approving:

- (a) A capital and revenue budget for ESPO before the commencement of each Financial Year;
- (b) the ESPO Annual Report (including the annual management accounts and statutory statements of accounts), Business Plan and Business Strategy (including major investments/service offering/the basis of evaluating performance) in each Financial Year;

- (c) the distributable surplus which shall be distributed between the Member Authorities at the end of each Financial Year in proportion to their level of purchasing through ESPO in that Financial Year as determined by the Management Committee;
- (d) ESPO strategic documentation specifically the documentation listed in Table A in Appendix 4 to this Constitution and also the Contractual Procedure Rules, Financial Regulations and the Standard Financial Instructions Rules and Procedural Standing Orders and seeking update reports from the Director of ESPO on ESPO's use of this documentation where required;
- (e) any change to ESPO strategic documentation and procedures;
- (f) any increase or reduction in the provision of the ESPO Services;
- (g) any adjustments in the capital or revenue budgets of ESPO in each Financial Year to address spending or overspending incurred in the previous Financial Year;
- (h) any proposals for capital expenditure in excess of the annual limits set down by the Management Committee (seeking the guidance of the Consortium Treasurer where necessary);
- (i) high risk contracts;
- (j) the settlement of any legal claims which could have (in the view of the Management Committee) significant financial or reputational consequences for ESPO;
- (k) on-going costs which might not be containable seeking the guidance of the Consortium Treasurer where necessary;
- (l) any handover strategy dealing with the departure of a Member Authority acting as Servicing Authority to a new Member Authority assuming that role or other arrangement as may be agreed by the Management Committee (pursuant to clause 11 of the Consortium Agreement);
- (m) any Implementation Plan for dealing with the consequences of one or more Member Authorities leaving the Management Committee (pursuant to clause 16 of the Consortium Agreement);
- (n) any Implementation Plan for the dissolution of ESPO (pursuant to clause 12 of the Consortium Agreement); and
- (o) changing the trading name of 'ESPO'.

### 2.1.3 **Agreeing:**

- (a) the acquisition, disposal and allocation of all land and property to be used for ESPO;
- (b) the funding of any capital expenditure;
- (c) any expenditure which has been included in the budget of that Financial Year for service improvements above the value of £20,000;
- (d) the extent and cost of the functions of the Servicing Authority; and
- (e) the resolution of high-risk audit findings and significant governance concerns;

- 2.1.4 Appointing (and agreeing the removal and/or replacement of) the Servicing Authority on such terms as the Management Committee considers appropriate.
- 2.1.5 Appointing (and agreeing the removal and/of replacement of) the ESPO Director on such terms as the Management Committee considers appropriate.
- 2.1.6 Confirming the appointment of (the removal and/or replacement of) of personnel into the role of the Consortium Treasurer, the Consortium Secretary and any other such officers as the Management Committee considers appropriate.
- 2.1.7 Considering applications for additional membership to, or exit from, the Management Committee.
- 2.1.8 Adopting, varying and terminating this Agreement which shall be by unanimous agreement unless where otherwise specified in this Agreement.
- 2.1.9 The termination of the ESPO Consortium.

### **3 MEMBERSHIP**

- 3.1 The Management Committee shall comprise two nominated members (being elected members of each Member Authority) (the 'Members') the identity of whom shall be confirmed by each Member Authority in writing to the Consortium Secretary.
- 3.2 Each Member Authority may at any time nominate one or more substitute Members to attend any meeting in place of either of their appointed Members.
- 3.3 A Member Authority may at any time change any of its appointed Members (or substitute Members) by giving written notice to the Consortium Secretary.
- 3.4 A Member shall immediately cease to be a Member of the Management Committee if he/she ceases to be a member of the Member Authority appointing him/ her.
- 3.5 Each Member shall comply with its Authority's members' Code of Conduct and relevant training programmes when acting as a Member. Each Member Authority shall ensure that the Consortium Secretary has access to the up to date version of its members' Code of Conduct.

### **4 DECISION MAKING AND DELEGATIONS**

- 4.1 The Management Committee is the sole decision maker on ESPO subject to any delegations as it sees fit.

- 4.2 The Management Committee may establish such sub-committees or advisory bodies, and appoint such officers as it sees fit and may delegate such powers and responsibilities to any sub-committee, the Director of ESPO, advisory group or officer as it sees fit subject to any legislative constraints or requirements in the Consortium Agreement.
- 4.3 The Management Committee hereby formally establishes the Finance and Audit Subcommittee with the membership, the terms of reference and delegations set out in **Appendix 1** of this Constitution.
- 4.4 The Management Committee hereby formally establishes the Chief Officers' Group (COG) with the membership and terms of reference set out in **Appendix 2** of this Constitution.
- 4.5 The Management Committee hereby formally confirms the appointment of the Consortium Secretary and Consortium Treasurer and delegates to those officers those functions set out in **Appendix 3** of this Constitution.
- 4.6 The Management Committee hereby formally confirms the appointment of the Director of ESPO and delegates to him/her those functions set out in **Appendix 4** of this Constitution.

## General Conditions of Delegations

4.7 Any exercise of delegated powers:

- (a) shall not prevent the Management Committee from exercising those functions itself;
- (b) shall not prevent the Management Committee directing that it be consulted on any matter delegated prior to a decision being taken and reserving the right to make any decision itself or refer the matter for consideration by a sub-committee, advisory group, the Director of ESPO or an officer;
- (c) should not prevent a sub-committee, officer or the Director of ESPO from referring a matter to the Management Committee for decision if that body or individual considers it appropriate. In particular, the Management Committee shall expect its sub-committees, advisory groups, officers or the Director of ESPO to draw its attention to sensitive issues or any matter which may have a significant financial and/or reputational implication on ESPO;
- (d) shall not authorise expenditure except in accordance with the approved capital and revenue budget for ESPO;
- (e) must be in accordance with the Management Committee's Financial Regulations and Standard Financial Instructions, Contract Procedure Rules, and Procedural Standing Orders and other approved standing orders as may be applicable; and
- (f) shall be properly documented and available for inspection by the Management Committee at any time.

4.8 The sub-committees, officers of the Management Committee and the Director of ESPO shall be responsible for ensuring the provisions and obligations of these delegations are properly drawn to the attention of members of personnel under their direction and control.

4.9 The Management Committee may at any time change the delegations by majority agreement.

## **5 MEETINGS**

- 5.1 The Management Committee shall normally meet quarterly and on such other occasions as it sees fit. The time and place of such meetings shall normally be agreed by the Management Committee or the Chair.
- 5.2 Where there is a statutory requirement for the Management Committee to meet the Consortium Secretary may convene a meeting.
- 5.3 The Management Committee shall hold an annual meeting in June to elect the Chair and Vice-Chair of the Management Committee and to approve the schedule of meetings for the Management Committee, the Finance Sub-Committee (and any other sub-committee as may be set up by the Management Committee) in that Financial Year.
- 5.4 The Consortium Secretary may call an extraordinary meeting of the Management Committee at any time by giving at least five (5) clear days' written notice to the Members for the purposes of resolving any urgent matters.
- 5.5 Specifically an extraordinary meeting of the Management Committee shall be convened in circumstances whereby the Servicing Authority resigns (pursuant to clause 11 of the Consortium Agreement) for the Management Committee to agree by majority decision to appoint another Member Authority to act as Servicing Authority or an alternative strategy as may be appropriate.
- 5.6 The Consortium Secretary must call a meeting of the Management Committee if at least half of the Member Authorities request it.

## **6 STANDING ORDERS**

- 6.1 Subject to anything expressly provided herein, the Procedural Standing Orders of the Management Committee set out in **Appendix 5** to this Constitution shall apply to the Management Committee and its subcommittee/s. These may be amended at any time with the majority agreement of the Management Committee.
- 6.2 Any motion at a meeting of the Management Committee to add to, vary or revoke the Procedural Standing Orders shall when proposed and seconded stand adjourned without discussion to the next ordinary meeting of the Management Committee.

## **7 RULES AND REGULATIONS OF THE MANAGEMENT COMMITTEE**

- 7.1 The Financial Regulations and the Standard Financial Instructions of ESPO shall be those adopted by the Management Committee on 24 June 2011. These may be amended at any time with the majority agreement of the Management Committee. These are set out in at **Appendix 6** to this Constitution.

7.2 The Contract Procedure Rules shall be those adopted by the Management Committee on 1 July 2018. These may be amended at any time with the majority agreement of the Management Committee. These are set out in **Appendix 7** to this Constitution.

## **8 OFFICERS OF THE MANAGEMENT COMMITTEE**

8.1 The Management Committee may engage such officers as it considers necessary to carry out its functions.

8.2 The delegations to the Consortium Secretary and Consortium Treasurer are set out in in **Appendix 3** to this Constitution. These may be amended at any time with the majority agreement of the Management Committee.

8.3 The officers of the Management Committee shall act within the delegations given to them by the Management Committee and shall provide full assistance to the Management Committee on any issue when requested to do so.

8.4 The officers of the Management Committee shall liaise with the Monitoring Officers and Section 151 Officers of each Member Authority to enable those officers to comply with their responsibilities under Section 5 of the Local Government Act 1989 and Section 151 of the Local Government Act 1972.

8.5 The officers of the Management Committee shall act pursuant to the Officer's Code of Conduct of their employing Authority.

8.6 The costs incurred by the officers of the Management Committee in making available appropriate professional services to the Management Committee, its sub-committees, advisory groups and officers shall be reimbursed through ESPO. The Servicing Authority shall (if requested by any Member Authority or the Management Committee) provide any records or information in respect of such reimbursement as soon as is reasonably practical.



## APPENDIX 1

### TO THE CONSTITUTION OF THE ESPO MANAGEMENT COMMITTEE TERMS OF REFERENCE OF THE ESPO FINANCE AND AUDIT SUBCOMMITTEE

#### **1. MEMBERSHIP**

One (1) Member from each Member Authority currently sitting on the Management Committee.

#### **2. FUNCTIONS**

The functions delegated to the Finance and Audit Subcommittee shall be:

1. To receive and approve Internal Audit reports (annual plans, progress and annual reports, and the Internal Audit Charter), escalating high importance recommendations and significant governance concerns to Management Committee for review.
2. To receive and approve the results of the independent external audit, escalating any material control deficiencies or financial irregularities identified to Management Committee for review.
3. To overseeing the process of risk management by:
  - i. Influencing the culture of risk management within the Organisation.
  - ii. Ensuring that a Corporate Risk Register is maintained, including details of the actions taken to mitigate the risks identified.
  - iii. Annually reviewing the Director's statement on the effectiveness of the Organisation's internal control system / Annual Governance Statement
  - iv. Review the Organisation's approach to risk management and approve changes or improvements to key elements of its processes and procedures. *(Note - Changes to risk appetite or the level of risk exposure to remain the responsibility of Management Committee – see 8 below.)*
  - v. Ensuring that the organisation's Contract Procedure Rules are maintained and kept under reasonable review.

The functions referred to the Finance and Audit Subcommittee shall be:-

4. To support the financial planning process by reviewing the content and presentation of draft financial plans and significant Business Cases for the Management Committee;
5. To contribute to the setting of financial performance targets and the monitoring of financial improvements;
6. To receive and review regular reports on monitoring of budgets and performance and other financial management;
7. To receive and review the draft annual financial statements for the Management Committee.
8. To support the Management Committee overseeing the process of risk management and advising on any changes to the risk appetite or level of risk exposure.

#### **3. QUORUM**

The quorum at meetings of the Finance and Audit Subcommittee shall be at least 3 (three) Members who are entitled to attend and vote.

#### **4. SUBSTITUTES**

Members appointed to serve on the Subcommittee may nominate another member from their Authority to act as a substitute member at a particular meeting provided that at least one day's notice is given to the Consortium Secretary.

**APPENDIX 2**  
**TO THE CONSTITUTION OF THE ESPO MANAGEMENT COMMITTEE**  
**TERMS OF REFERENCE OF THE ESPO CHIEF OFFICERS GROUP ('COG')**

**1 PURPOSE**

- 1.1 To advise the Management Committee on business strategy, performance and key issues and to work with the Director of ESPO.

**2 FUNCTIONS**

***General***

- 2.1 Reviewing and advising the Finance and Audit Subcommittee and Management Committee on the performance of ESPO.
- 2.2 Championing the role of ESPO within Member Authorities.
- 2.3 Generating opportunities for collaboration between the Member Authorities.

***COG and the Management Committee***

- 2.4 Acting as the advisory and monitoring group to the Management Committee.
- 2.5 Ensuring that the Management Committee is regularly and adequately briefed on all key matters relating to the ESPO business.
- 2.6 Providing recommendations to Management Committee for consideration.
- 2.7 Overseeing the implementation of Management Committee decisions.
- 2.8 Reviewing key strategies relating to the ESPO business to decide whether to refer these to the Management Committee for decision.

### ***COG and the Director of ESPO***

- 2.9 Reviewing and advising the Management Committee on Contract Review Reports produced by the Director of ESPO where appropriate.
- 2.10 Reviewing and advising the Management Committee on the ESPO Business Plan and Business Strategy reports produced by the Director of ESPO where appropriate.
- 2.11 Reviewing and advising the Management Committee on its Financial Regulations and Standard Financial Instructions; and the Finance and Audit Subcommittee on its Contract Procedure Rules, where appropriate.
- 2.12 Dealing with any issues of concern or risk in relation to the ESPO business referred to it by the Director of ESPO (if these cannot be resolved the COG to refer to the Finance and Audit Subcommittee).

### ***Consortium Arrangements***

- 2.13 Ensuring that the activities of the Member Authorities relating to ESPO reflect the principles and agreement laid down in the Consortium Agreement.
- 2.14 Overseeing the work of the officers of the Management Committee to enable it to monitor the delivery of the ESPO business (including financial monitoring) and to evaluate outcomes on behalf of the Member Authorities.
- 2.15 Reviewing proposals for new members to the Management Committee notwithstanding that the ultimate decision to admit new members to rest with the Management Committee.
- 2.16 Advising the Management Committee on the implications of any Member Authorities exiting the Management Committee.
- 2.17 Advising the Management Committee on the implications of any breaches and/or variations to the Consortium Agreement.
- 2.18 Dealing with any dispute between Member Authorities relating to the ESPO business in line with the dispute resolution procedure outlined in clause 18 of the Consortium Agreement.

### **3 LIMITATIONS**

3.1 COG will exercise its functions subject to any limitations which may be imposed by the Management Committee.

### **4 MEMBERSHIP**

4.1 One Chief Officer from each Member Authority.

4.2 Each member of the COG may nominate an alternate substitute member from his/her own Member Authority who may stand in for that member at a COG meeting if he/she is unable to attend.

### **5 MEETINGS**

5.1 An annual meeting of the COG shall be held each year on such date as agreed by the members of the COG to deal with the appointment of a Chair and Vice Chair together with any other business normally transacted at a COG meeting.

5.2 In addition to the annual meeting, the COG will hold at least three (3) ordinary meetings each year, such meetings to take place on a quarterly basis.

5.3 The timing of each COG meeting to be scheduled in advance to feed into reporting at the next quarterly meeting of the Management Committee.

**APPENDIX 3**  
**TO THE CONSTITUTION OF THE ESPO MANAGEMENT COMMITTEE**  
**DELEGATIONS TO THE ESPO CONSORTIUM SECRETARY**  
**AND ESPO CONSORTIUM TREASURER**

**1. CONSORTIUM SECRETARY**

In addition to those functions specified in this Agreement, the Consortium Secretary shall be responsible to the Management Committee for the following functions:

- (a) Providing regular reports and advice where required to the Management Committee on any matters in relation to governance and propriety in relation to ESPO;
- (b) Providing such proactive assistance and information to the Management Committee as it shall require to enable it to monitor the performance of ESPO;
- (c) Responsibility for ensuring the production of the agenda and minutes of the Management Committee and its sub-committees;
- (d) Advising the Management Committee or its sub-committees on points of procedure and/or conduct at meetings;
- (e) Receiving and recording any declarations of interests from Members or officers made at any meetings of the Management Committee or its sub-committees;
- (f) Complying with legal requirements regarding the publication and accessibility of Management Committee (and its sub-committees) documentation including maintaining an up to date list of Members and records of meetings;
- (g) Advising the Management Committee or its sub-committees on any matters relating to this Agreement and to amend the Agreement in writing to reflect any variations that have been approved by the Management Committee in accordance with clause 24 of the Agreement (Variation);
- (h) Ensuring the provision of legal advice (via the County Solicitor of the Servicing Authority or other arrangement as the Management Committee may determine) to the Management Committee whenever this is considered to be in the interest and benefit of the Management Committee;
- (i) Advising the Management Committee on any issues raised by the Commission for Local Administration and providing the Management Committee with any advice or support it may request; and
- (j) Taking any other action between meetings which he/she considers is urgent in consultation with the Chair and the Vice Chair of the Management Committee (or relevant sub-committee

or advisory group as the Chair (or the Vice Chair in his/her absence) may delegate that role to) only to the extent necessary to deal with the urgency/emergency arising subject to the details of such action being reported to next meeting of the Management Committee.

## **2. CONSORTIUM TREASURER**

In addition to those functions specified in this Agreement (and in particular, but not limited to, those functions in the Financial Regulations and Financial Instructions of the Management Committee), the Consortium Treasurer shall be responsible to the Management Committee for the following functions:

- (a) The proper administration of ESPO's financial affairs on behalf of the Management Committee;
- (b) Having first informed the COG, reporting to the Management Committee if in his/her opinion there is any significant failure in the proper administration of ESPO;
- (c) Fulfilling his/her statutory duty of the Consortium Treasurer;
- (d) Issuing accounting instructions to complement the Financial Regulations for ESPO and the Standard Financial Instructions as may be necessary;
- (e) Providing regular reports and advice where required to the Management Committee (and Finance and Audit Subcommittee where detailed in Appendix 1) on financial matters relating to ESPO;
- (f) Advising the Management Committee on financial propriety;
- (g) Acting in a consultative capacity to the Director of ESPO to enable him/her to produce an annual budget for consideration by the Management Committee;
- (h) Advising (in consultation with the Servicing Authority and the Director of ESPO) the Management Committee (and Finance and Audit Subcommittee where detailed in Appendix 1) on the safeguarding of assets, including risk management and insurance;
- (i) Providing such proactive assistance and information to the Management Committee (and Finance and Audit Subcommittee where detailed in Appendix 1) as it shall require to enable it to monitor the financial and overall performance of ESPO; and
- (j) Co-ordinating the activities of, and consulting with where appropriate, the Member Authorities' Section 151 Officers so as to ensure consistency of approach on financial matters affecting ESPO.

## APPENDIX 4

### TO THE CONSTITUTION OF THE ESPO MANAGEMENT COMMITTEE

#### FUNCTIONS OF, AND DELEGATIONS TO, THE DIRECTOR OF ESPO

##### DELEGATIONS TO THE DIRECTOR OF ESPO

### DELEGATIONS

1. **Appointment of staff:** Power to appoint (within the approved ESPO budget) all staff below director level in accordance with the Servicing Authority's recruitment and HR policies and procedures. The appointment may be at any point within the approved salary scale of the Servicing Authority as appropriate.
2. **Personnel procedures:** Power to take decisions in relation to employment matters delegated to him from time to time in accordance with the local conditions of service and other HR policies and procedures in place at the Servicing Authority. The Chief Executive of the Servicing Authority may determine at any time those matters which may be exercised by the Director of ESPO without the prior consultation with the Chief Executive.
3. **Power to Incur Expenditure:** Power to incur capital or revenue expenditure in accordance with the Financial Regulations and the Standard Financial Instructions of the Management Committee.
4. **Contracts:** The Director of ESPO may negotiate and agree tenders and quotes and the entering into contracts on behalf of ESPO (subject to the Contract Procedure Rules of the Management Committee at **Appendix 7** of this Constitution and any restrictions in the Consortium Agreement) and request that the Servicing Authority formally enter into such contracts if this is legally required.
5. **Surplus Equipment:** Power to dispose of surplus or obsolete items (vehicles apparatus or other equipment) in accordance with the Financial Regulations and the Standard Financial Instructions of the Management Committee.
6. **ESPO Stock:** Power to 'write off' (or adjusting surpluses or deficits) ESPO stock in accordance with the Financial Regulations and the Standard Financial Instructions of the Management Committee.
7. **Irrecoverable Items:** Power to 'write off' other irrecoverable amounts in accordance with the Financial Regulations and the Standard Financial Instructions of the Management Committee.
8. **Lost or uncollected property:** Power to deal with items under Section 41 of the Local Government Miscellaneous Provisions Act 1982 in relation to lost and uncollected property on ESPO premises.

### RESPONSIBILITIES

1. Operational day to day management of the ESPO business and ESPO staff and responsibility for implementing Management Committee/Finance and Audit Subcommittee decisions within the ESPO business.
2. Ensuring that the ESPO Services are developed in accordance with the Management Committee's overall requirements.



3. Responsible to the Management Committee which shall have overall responsibility for overseeing and scrutinising his/her activities.
4. Responsible to the Chief Executive Officer of the Servicing Authority as his/her employing authority in the context of that employer/employee relationship.
5. Effectively liaising with the Management Committee and its advisory groups, sub-committees and officers to ensure the effective operation of the ESPO business.
6. Providing such proactive assistance and information to the Management Committee and its advisory groups, sub-committees and officers as shall be required to enable the Management Committee to monitor the performance of ESPO.
7. Raising any issue of concern in relation to the ESPO business in the first instance to the COG.
8. Ensuring that the ESPO Services continue to be affordable and represent value for money for the Member Authorities.
9. Ensuring the continuous improvement of the ESPO Services and to ensure that opportunities for shared working are maximised.
10. In conjunction with the Servicing Authority, advising the Member Authorities generally as to the resources and arrangements required for the effective operation of ESPO.
11. Responsibility for ensuring that the Financial Regulations and the Standard Financial Instructions of the Management Committee/Finance and Audit Subcommittee are observed throughout the ESPO business.
12. Responsibility for ensuring that Contract Procedure Rules of the Management Committee are observed throughout the ESPO business and to ensure every contract and variation to a contract is executed in writing.
13. Ensuring that business risk is appropriately managed and maintaining an appropriate risk framework for ESPO with effective and timely reporting mechanisms to the Finance and Audit Subcommittee.
14. Responsibility for seeking to resolve in good faith any disputes or disagreements between the Member Authorities and to carry out the functions set out in clause 18 of the Consortium Agreement
15. Providing advice to the Management Committee on proposed policies, projects, budgets, strategic plans and the performance of ESPO in order to maintain the support and engagement of Management Committee and to ensure that each Member Authority uses ESPO to best effect.
16. In consultation with the Consortium Treasurer, responsible for producing the Annual Report of ESPO (containing the activities and financial performance of ESPO for the preceding Financial Year) to the Management Committee in each Financial Year for its approval and (once approved) providing copies to each Member Authority.
17. Receiving the resignation of the Member Authority acting as Servicing Authority at any time and providing this notification to the Management Committee.

18. Responsible for producing and maintaining the following strategic and operational documentation for ESPO, advising and updating the Management Committee, its sub-committees, advisory groups or officers on these as appropriate and ensuring that these are observed throughout the ESPO business:

#### A. ESPO STRATEGIC DOCUMENTATION

Document	Purpose	Submitted to	Frequency
Business Continuity Plan	This document defines how ESPO will maintain its business and support to Member Authorities in the event of an incident which impacts adversely on business critical ESPO Services	Chief Officer Group Management Committee	Annual
Business Progress Report	This document defines: <ul style="list-style-type: none"> <li>• progress against business plan</li> <li>• progress against work plans within strategic projects</li> </ul>	Chief Officer Group Management Committee	Quarterly
Business Plan	This document defines how ESPO will deliver the Business Strategy in each Financial Year including any investments to be made and: <ul style="list-style-type: none"> <li>• Budget, financial plan and risk register</li> <li>• Financial and performance targets</li> </ul>	Chief Officer Group Management Committee Finance and Audit Subcommittee	Annual
Business Strategy	This document sets out the overriding purpose of ESPO (its mission), the aspiration of the organisation (its strategic vision), a set of business objectives and the nature of the business	As required	As required
Category Strategies	This document defines the roadmap for managing a spend category and presenting a plan of quick-win and longer term savings opportunities which will include collaboration at the local, regional and national levels (including Pro 5)	SOG Management Committee	Annual
ESPO Service Review Report	This document defines: <ul style="list-style-type: none"> <li>• the purpose of the work required (objectives and outcomes);</li> <li>• any conflict of interest that may arise;</li> <li>• the level of risk exposure</li> </ul>	Chief Officer Group Management Committee	As and when the ESPO Director is requested to take on Additional ESPO Services
Financial Statements (External Audit/ Quality Assurance)	This document defines: <ul style="list-style-type: none"> <li>• The end of year financial position of ESPO against plan</li> </ul>	Chief Officer Group Management Committee Finance and Audit Subcommittee	Annual
ICT Strategy	(Through the ESPO Assistant Director of Finance): To set out the technical and capacity requirements of ESPO to match the needs to the Business Strategy	As required	As required

Document	Purpose	Submitted to	Frequency
Management Accounts	This document defines the monthly/quarterly financial position of ESPO against plan	Chief Officer Group Management Committee	Quarterly
Marketing Strategy	This document defines the marketing priorities in relation to ESPO's customers, suppliers and other Public Sector Buying Organisation relationships	Chief Officer Group Management Committee	Annual

## B. ESPO OPERATIONAL DOCUMENTATION

Document	Purpose	Submitted to	Frequency
Customer Access Agreement (Terms of Business)	Governs the relationship between ESPO and the Member Authorities or Customers in relation to ESPO granting access by the Customer to the Framework Agreement. ESPO clarifies the terms and conditions on which it is contracting with suppliers and permits Member Authorities and Customers to enter into call-off contracts with suppliers. The Member Authority or Customer is able to enforce the terms and conditions in the Framework Agreement	Chief Officer Group	As required
Equality Impact Assessment	This document defines: <ul style="list-style-type: none"> <li>The impact the Additional ESPO Services may have upon ethnicity and user groups as assessed by the relevant Member Authorities</li> </ul>	COG	As and when the ESPO Director is requested to take on Additional ESPO Services
Framework Agreement for Good and Services (including Call Off Agreement)	Precedent Framework Agreement to govern the relationship between ESPO and suppliers in relation to the provision of goods and/or services by suppliers to ESPO and or the Member Authorities and/or Customers	COG	As required
Internal Audit Report	This document defines: <ul style="list-style-type: none"> <li>Level of internal risk and control experienced within ESPO;</li> <li>The recommendations ESPO will need to address to mitigate any risks highlighted</li> </ul>	Finance and Audit Subcommittee Servicing Authority	As and when internal audit has a high level of residual concern
Order Form for the Purchase of Goods (one off purchases)	Issued subject to the provisions of the framework agreement entered into between ESPO and the Supplier	or COG	As required
Terms of Business for Suppliers	Sets out the terms of business for suppliers	COG	As required
Statement of Works	Sets out ESPO's role and the way in which it provides a service to the Member Authorities and/or Customers throughout a tender process	COG	As required
Work Plans (including Pro 5)	This document captures: <ul style="list-style-type: none"> <li>Type and value of activities to be undertaken by ESPO on behalf of consortium authorities and non-members (including collaborative and individual projects)</li> <li>These work plans are derived from consortium authorities' priorities and work plans in place as well as the category strategy</li> </ul>	COG	Quarterly

**APPENDIX 5**  
**TO THE CONSTITUTION OF THE ESPO MANAGEMENT COMMITTEE**  
**PROCEDURAL STANDING ORDERS OF THE ESPO MANAGEMENT COMMITTEE**  
**AND ITS SUB-COMMITTEES**

Standing Order 1	<a href="#"><u>Notice and Summons to a Meeting</u></a>
Standing Order 2	<a href="#"><u>Public Access to Agendas and Reports</u></a>
Standing Order 3	<a href="#"><u>Quorum</u></a>
Standing Order 4	<a href="#"><u>Chair and Vice Chair</u></a>
Standing Order 5	<a href="#"><u>Chair of the Meeting</u></a>
Standing Order 6	<a href="#"><u>Order of Business</u></a>
Standing Order 7	<a href="#"><u>Variation of Order of Business</u></a>
Standing Order 8	<a href="#"><u>Minutes</u></a>
Standing Order 9	<a href="#"><u>Motions and Amendments generally</u></a>
Standing Order 10	<a href="#"><u>Amendments to Motions</u></a>
Standing Order 11	<a href="#"><u>Alterations or withdrawal of motion or amendment</u></a>
Standing Order 12	<a href="#"><u>Personnel engaged on ESPO</u></a>
Standing Order 13	<a href="#"><u>Speeches and Conduct of Members During Debate</u></a>
Standing Order 14	<a href="#"><u>Seconder's Speech</u></a>
Standing Order 15	<a href="#"><u>When a Member may speak again</u></a>
Standing Order 16	<a href="#"><u>Right of reply</u></a>
Standing Order 17	<a href="#"><u>Points of order and personal explanations</u></a>
Standing Order 18	<a href="#"><u>Next business</u></a>
Standing Order 19	<a href="#"><u>Adjournment of debate</u></a>
Standing Order 20	<a href="#"><u>Closure</u></a>
Standing Order 21	<a href="#"><u>Voting</u></a>
Standing Order 22	<a href="#"><u>Recorded Vote</u></a>
Standing Order 23	<a href="#"><u>General Disturbances</u></a>
Standing Order 24	<a href="#"><u>Interests in contracts and other matters</u></a>
Standing Order 25	<a href="#"><u>Record of attendances</u></a>

<b>Standing Order 26</b>	<a href="#">Meetings of sub-committees</a>
<b>Standing Order 27</b>	<a href="#">Proceedings of sub-committees</a>
<b>Standing Order 28</b>	<a href="#">Variation and revocation of Procedural Standing Orders</a>
<b>Standing Order 29</b>	<a href="#">Suspension of Procedural Standing Orders</a>
<b>Standing Order 30</b>	<a href="#">Interpretation of Standing Orders</a>

### **Standing Order 1. Notice and Summons to a Meeting**

- 1.1. At least five (5) clear days' notice to the public of the time and place of any meeting of the Management Committee (or its sub-committees) must be given by posting details at the offices of Leicestershire County Council as Servicing Authority which shall be the 'designated office' for these purposes. Notice of meetings shall also be published on the web at [www.leics.gov.uk](http://www.leics.gov.uk).
- 1.2. At least five (5) clear days before a meeting, a summons signed by the Consortium Secretary must be sent to every Member of the Management Committee or left at their usual place of residence or such other alternative address as notified to the Consortium Secretary in writing. The summons will give the date time and place of the meeting and specify the business to be transacted and shall be accompanied by the relevant reports.

### **Standing Order 2. Public Access to Agendas and Reports**

- 2.1 Copies of the agenda and accompanying reports for any meeting of the Management Committee (or its sub-committees) shall be made available for inspection by the public at the designated office at least five (5) clear days before the meeting.
- 2.2 Where an urgent item is to be considered with the agreement of the Chair (or the Vice Chair in his/her absence) and where supplementary information is being provided to a report already submitted on the agenda the Consortium Secretary shall make each such report available to the public for inspection as soon as the report has been sent to the Members.
- 2.3 Nothing in 2.1 or 2.2 of these Procedural Standing Orders requires any report containing exempt information (as defined in Schedule 12A of the Local Government Act 1972) or confidential information to be made available for public inspection.
- 2.4 Any confidential or exempt information and documentation shall be kept confidential by all Members.
- 2.5 Any dispute relating to the rights of access of any person under this Constitution or any statutory provision or common law rights shall be referred to the Consortium Secretary for consideration subject to him/her seeking the views of the Management Committee as necessary.
- 2.6 The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

- 2.7 The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

### **Standing Order 3. Quorum**

- 3.1 The quorum at meetings of the Management Committee at least 4 (four) Members who are entitled to attend and vote, provided that at least 4 (four) of the Member Authorities are represented. Any legal requirements which from time to time specify a particular quorum will be observed.
- 3.2 If the Chair declares there is no quorum (at the start or during the course of a meeting) the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chair or at the next meeting of the Management Committee, as necessary.

### **Standing Order 4. Chair and Vice Chair**

- 4.1 The Chair and Vice Chair shall be selected using a rota drawn up by the Consortium Secretary and approved by the Management Committee.
- 4.2 The Chair for the following year shall be drawn from the Membership of the Member Authority who held the vice chair position in the preceding year.
- 4.3 The current order of rotation as at the date of this Agreement shall continue.

### **Standing Order 5. Chair of the Meeting**

- 5.1 Any power or duty of the Chair in relation to the conduct of a meeting may be exercised by the person presiding at the meeting.

### **Standing Order 6. Order of Business**

- 6.1 Except as otherwise provided in these Procedural Standing Orders the order of business at meetings of the Management Committee shall be:
- 6.1.1 To choose an individual to preside if the Chair and Vice-Chair be absent;
  - 6.1.2 To confirm the minutes of the last meeting of the Management Committee;
  - 6.1.3 To dispose of business (if any) remaining from the last meeting;
  - 6.1.4 Other business, if any, specified in the summons (agenda).

### **Standing Order 7. Variation of Order of Business**

- 7.1 Business falling under items 6.1.1 and 6.1.2 shall not be displaced but subject thereto the foregoing order of business may be varied:-
- 7.1.1 By the Chair at his/her discretion; or
  - 7.1.2 By a resolution passed at the meeting. A motion to vary the order of business shall be moved and seconded and put without discussion.

### **Standing Order 8. Minutes**

At a meeting of the Management Committee at which minutes of a previous meeting are submitted for approval as a correct record, the Chair shall move that

those minutes be so approved.

- 8.1 No motion or discussion shall take place upon the minutes, except upon their accuracy, and any matter concerning their accuracy shall be raised by amendment.
- 8.2 If no such matter is raised, or if it is raised then as soon as it has been disposed of, the Chair shall sign the minutes.
- 8.3 In circumstances whereby an extraordinary meeting of the Management Committee is convened, the next following meeting of the Management Committee (being a meeting called otherwise than under that paragraph) may be treated as a suitable meeting for the purposes of paragraphs 41(1) and (2) (signing of minutes) of Schedule 12 of the Local Government Act 1972.

#### **Standing Order 9. Motions and Amendments**

- 9.1 Any motion or amendment shall not be discussed unless it has been proposed and seconded, and it shall, if required by the Chair, be put into writing and handed to the Chair before it is further discussed or put to the meeting.
- 9.2 A Member may not propose or second a motion or amendment on which he or she is disqualified from voting.

#### **Standing Order 10. Amendments to Motions**

- 10.1 An amendment shall be relevant to the motion and shall be either:
  - 10.1.1 to refer a subject of debate to the Finance and Audit Subcommittee, other relevant sub-committee or the Chief Officer Group for its consideration or re-consideration;
  - 10.1.2 to leave out words;
  - 10.1.3 to leave out words and insert or add others;
  - 10.1.4 to insert or add words;but such omission, insertion or addition of words shall not only have the effect of negating a motion before the Management Committee.
- 10.2 Only one amendment may be moved and discussed at a time and no further amendment shall be moved until the amendment under discussion has been disposed of - provided that the Chair may permit two or more amendments to be discussed (but not voted on) together if he or she considers that this course would facilitate the proper conduct of the Management Committee's business.
- 10.3 If an amendment be lost, other amendments may be moved on the original motion. If an amendment be carried, the motion as amended shall take the place of the original motion and shall become the substantive motion upon which any further amendment may be moved.



## **Standing Order 11. Alterations or withdrawal of motion or amendment**

- 11.1 A proposer of a motion may, with the concurrence of the seconder and the consent of the Management Committee, alter the motion if the alteration is such that it could properly be effected by an amendment of the motion. A proposer of an amendment may, with the like concurrence and consent, alter the amendment if the amendment as altered could properly have been moved in that form as an amendment. The altered motion or amendment shall if required by the Chair be produced into writing and handed to him or her before the consent of the Management Committee to the alteration is sought.
- 11.2 A proposer of a motion or of an amendment may, with the concurrence of the seconder and the consent of the Management Committee, withdraw the motion or amendment which he or she has proposed, and no Member shall speak upon it after the proposer has thus asked permission for its withdrawal, unless such permission shall have been refused.
- 11.3 The giving or refusal of the consent of the Management Committee to the alteration or withdrawal of a motion or amendment shall be signified without discussion.

## **Standing Order 12. Personnel engaged on ESPO**

- 12.1 If any question arises at a meeting of the Management Committee or a sub-committee as to the appointment, promotion, dismissal, salary, pension, conditions of service or the conduct of any person employed or engaged by the Servicing Authority on behalf of ESPO, such question shall not be the subject of discussion until the body concerned has decided whether or not the power of exclusion of the public shall be exercised.

## **Standing Order 13. Speeches and Conduct of Members During Debate**

- 13.1 A Member shall direct his or her speech to the question under discussion or to a personal explanation or to a point of order and shall not impute motives or use offensive expressions to or about any other Member.
- 13.2 The Chair shall use his or her discretion in the length of time granted to speakers.
- 13.3 A Member when speaking shall address the Chair.
- 13.4 If two or more Members wish to speak, the Chair shall call on one to speak, the other or others shall then wait to be heard.
- 13.5 While a Member is speaking the other Members shall remain silent, unless raising a point of order or in personal explanation.
- 13.6 Whenever the Chair wishes to make themselves heard during a debate a Member then speaking shall fall silent.
- 13.7 If any Member in the opinion of the Chair signified to the Management Committee, misconduct himself or herself by persistently disregarding the ruling of the Chair, or by behaving irregularly, improperly, or offensively, or by wilfully obstructing the business of the Management Committee, or by tedious repetition or unbecoming language in his or her speech, the Chair or any other Member may move "*That the member named be not further heard*", and such motion if seconded shall be put and determined without discussion.
- 13.8 If the Member named continues his or her misconduct after a motion under 16.7

has been carried, the Chair shall either:-

13.8.1 move "That the Member named do leave the meeting" (in which case the motion shall be put and determined without seconding or discussion); or

13.8.2 adjourn the meeting for such period as he or she in his or her discretion shall consider expedient.

#### **Standing Order 14. Secunder's Speech**

14.1 A Member when seconding a motion or amendment may, if he or she then declares his or her intention to do so, reserve his or her speech until a later period of the debate.

#### **Standing Order 15. When a Member may speak again**

15.1 Subject to anything specifically provided for in these Standing Orders, the regulation of business, including speeches and debates will be at the Chair's discretion.

#### **Standing Order 16. Right of reply**

16.1 The proposer of a motion shall have the right to reply to the debate:-

- (a) at the close of the debate on the motion;
- (b) at the close of the debate on an amendment to the motion;
- (c) before a motion to proceed to next business or that the Management Committee adjourn or a motion or amendment to refer the subject of debate to a Committee is put;
- (d) after the closure is carried.

16.2 The proposer of an amendment shall not have the right of reply to either the debate on the amendment or to the debate on a substantive motion formed by the carrying of the amendment.

16.3 A Member exercising a right of reply shall strictly confine himself or herself to answering previous speakers to whom he or she has not already had the opportunity of replying and shall not introduce any new matter.

16.4 After every reply to which this Standing Order applies a decision shall forthwith be taken upon the motion or amendment then under discussion.

#### **Standing Order 17. Points of order and personal explanations**

17.1 A Member may raise a point of order or in personal explanation, and shall be entitled to be heard forthwith. A point of order shall relate only to an alleged breach of a Standing Order or statutory provision and the Member shall specify the Standing Order or statutory provision and the way in which he or she considers it has been broken. A personal explanation shall be confined to some material part of a former speech by him or her which may appear to have been misunderstood in the present debate.

17.2 The ruling of the Chair on a point of order or on the admissibility of a personal

explanation shall not be open to discussion.

### **Standing Order 18. Next business**

- 18.1 A Member who seeks to avoid a decision being taken on a matter under discussion may, at the conclusion of a speech of another Member, unless the Chair considers that the matter has been insufficiently discussed, move 'that the Management Committee proceed to the next business' or, if there is no other business to be transacted, *'that the Management Committee adjourn'*.
- 18.2 The proposer of such a motion may speak thereon for five (5) minutes but the seconding of the motion shall be formal and without comment and there shall be no debate on the motion.
- 18.3 On the seconding of the motion, the Chair shall first give the mover of the original motion an opportunity to speak on it for not more than five (5) minutes and then put to the vote the motion to proceed to the next business or to adjourn the meeting.
- 18.4 If that motion is carried, the original motion shall be considered as withdrawn.

### **Standing Order 19. Adjournment of debate**

- 19.1 A Member who seeks to interrupt a debate so that it may be continued at a later hour or on another occasion may, at the conclusion of the speech of another Member, move that the debate be adjourned to that hour or occasion.
- 19.2 If the Member does not specify an hour or occasion, the motion shall be deemed to intend that the debate shall be resumed at the next ordinary meeting of the Management Committee or a subcommittee as appropriate.
- 19.3 The proposer of such a motion may speak thereon for five (5) minutes but the seconding of the motion shall be formal and without comment and there shall be no debate on the motion except that the mover of the original motion may speak on it for not more than five minutes.
- 19.4 On the resumption after adjournment of an interrupted debate, the Management Committee shall proceed to the further consideration of the adjourned business as though the meeting had been continuous for the purposes of these Standing Orders.

### **Standing Order 20. Closure**

- 20.1 A Member may at the conclusion of the speech of another Member move *"that the proposition under discussion be now put"* (which is in these Standing Orders referred to as *"the closure"*).
- 20.2 The proposal and seconding of the closure shall be formal and without comment and there shall be no debate on it. The closure shall be put forthwith to the vote unless it appears to the Chair that the proposition to which it is sought to apply the closure has not been sufficiently discussed.
- 20.3 If the closure is carried, the motion or amendment which is the subject of the interrupted debate shall be put without further discussion, subject to the mover of the original motion, first having the right of reply given by Standing Order 17.

## **Standing Order 21. Voting**

- 21.1 Each Member or Substitute Member (as nominated by his/her Member Authority) present shall have one vote.
- 21.2 Voting shall, unless otherwise required by these Standing Orders or by statute, be by show of hands, or, at the discretion of the Chair, by voices and all decisions shall be decided by a majority of the Members present unless the Consortium Agreement or Constitution requires otherwise.
- 21.3 In the event of equality of votes the Chair may exercise a second or casting vote. There will be no restriction on how the Chair chooses to exercise a casting vote, however before exercising this, the Chair shall consider whether it is appropriate to defer the matter to the next meeting of the Management Committee.
- 21.4 If there are more than two people nominated for any position to be filled and there is no clear majority in favour of one person, the person with the least votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.
- 21.5 In taking the votes on any proposition, those Members only shall be entitled to vote who are present in the meeting room when the proposition is put from the Chair.
- 21.6 Where a meeting is held using Teams or via other video conferencing platforms the decision(s) taken at such shall be communicated in writing to all members of the Committee/Subcommittee. If no objection is received to the decision(s) within 5 days of the decision(s) being communicated, the Consortium Secretary be authorised to exercise delegated powers to implement the decision(s).
- 21.7 If any member of the Committee/Subcommittee objects to a decision(s) communicated under SO21.6 the Consortium Secretary shall not exercise delegated powers but shall, if necessary, convene an attended meeting of the Committee/Subcommittee to consider the matter.

## **Standing Order 22. Recorded Vote**

- 22.1 After a proposition is put from the Chair but before the vote is taken, any three Members may require that the voting shall be recorded in the minutes of the meeting so as to show whether each Member present gave his or her vote for or against the proposition or abstained from voting.
- 22.2 Where immediately after a vote is taken any Member so requires, there shall be recorded in the minutes of the proceedings of that meeting whether that person cast his or her vote for the question or against the question or whether he or she abstained from voting.

## **Standing Order 23. General Disturbances**

- 23.1 If a member of the public interrupts the proceedings at any meeting the Chair shall warn him or her. If he or she continues the interruption the Chair shall order his or her removal from the room. In case of general disturbance in any part of the room open to the public the Chair shall order that part to be cleared.

- 23.2 If, in the opinion of the Chair, misconduct or obstruction renders the due and orderly dispatch of business impossible, the Chair, in addition to any other power vested in him/her, may without the question being put suspend the meeting for a period not exceeding 30 minutes.

#### **Standing Order 24. Interests in contracts and other matters**

- 24.1 If any Member has any pecuniary interests as defined within their Member Authority's Code of Conduct in any contract, proposed contract, or other matter, that Member shall declare that interest and withdraw from the meeting while the contract, proposed contract, or other matter, is under consideration by the Management Committee.

*[Note: Each Consortium Authority is required by law to maintain a register of certain types of interests. All Members must give notice to their Monitoring Officer of interests covered within 28 days of being elected. Members are also required to ensure that interests are declared at meetings in accordance with legislation and Standing Order 24 above and that any disclosable interests declared at meetings which are not in their Authority's register are notified to their monitoring officer within 28 days of disclosure. By law each Consortium Authority's Register is open to public inspection.]*

#### **Standing Order 25. Record of attendances**

- 25.1 Every Member attending a meeting of the Management Committee or a sub-committee of which he or she is a member, shall sign his or her name in the attendance book or sheet provided for that purpose.

#### **Standing Order 26. Meetings of sub-committees**

- 26.1 The Consortium Secretary, in consultation with the chair of a sub-committee or the Chair of the Management Committee (or in their absence relevant Vice-Chair) may cause a special meeting of the sub-committee concerned to be called at any time.
- 26.2 A special meeting of a subcommittee shall be called on the request of at least one quarter of the whole number of members of the body concerned by notice in writing signed by them and given to the Consortium Secretary and specifying the business for which the meeting is to be called.

#### **Standing Order 27. Proceedings of sub-committees**

- 27.1 The quorum of a sub-committee, unless a special quorum is otherwise prescribed, shall be at least one quarter of the whole number of the body concerned, provided that in no case shall a quorum be less than three Members.
- 27.2 Any Member may attend as an observer at meetings of a sub-committee (except those meetings which the Management Committee may from time to time determine for the purposes of this Standing Order) to which he or she has not been appointed as a Member, including meetings or items of business from which the public has been excluded. If given permission by the Chair of the meeting, a Member attending as an observer may speak (but not vote) on any matter.
- 27.3 Subject to the provisions of Section 100 of the Local Government Act 1972, all reports and all documents marked as "confidential" or "not for publication" shall be treated as confidential until they become public in the ordinary course of ESPO's business.

- 27.4 No act of a subcommittee shall have effect until approved by the Management Committee except to the extent that the subcommittee has itself power to act without the approval of the Management Committee and the power so to act has been conferred upon the subcommittee.
- 27.5 These Standing Orders shall apply with any necessary modification to subcommittees.

**Standing Order 28. Variation and revocation of Procedural Standing Orders**

- 28.1 Any motion to add to vary or revoke these Procedural Standing Orders shall when proposed and seconded stand adjourned without discussion to the next ordinary meeting of the Management Committee.

**Standing Order 29. Suspension of Procedural Standing Orders**

- 29.1 Subject to 30.2 of this Standing Order, any of these Procedural Standing Orders may be suspended so far as regards any business at the meeting where its suspension is moved.
- 29.2 A motion to suspend any of the preceding Standing Orders shall not be moved without notice unless there shall be present at least one-half of the whole number of the Members.

**Standing Order 30. Interpretation of Procedural Standing Orders**

- 30.1 It shall be the duty of any Chair to conduct the meeting efficiently and effectively and at all times to act reasonably. The Chair shall have full power to conduct the meeting in the way that he/she considers most expedient and to decide upon any points of procedure subject only to statutory requirements (if any) and these Standing Orders.
- 30.2 The ruling of the Chair as to the construction or application of any of these Standing Orders, or as to any proceedings of the Management Committee or Subcommittee/s, having received the advice of the Consortium Secretary or his/her nominee as necessary, shall not be challenged at any meeting.

## APPENDIX 6

### TO THE CONSTITUTION OF THE ESPO MANAGEMENT COMMITTEE FINANCIAL REGULATIONS OF THE ESPO MANAGEMENT COMMITTEE (INCLUDING THE STANDARD FINANCIAL INSTRUCTIONS)

These Financial Regulations are to be read in conjunction with the ESPO Consortium Agreement, Constitution and the scheme of delegation and in the event of conflict the provisions in the ESPO Consortium Agreement, Constitution and the scheme of delegation shall prevail.

#### **RULE 1**

##### **Application of Rules**

(a) The previous agreement between Member Authorities relating to ESPO (21 April 1999) stated at clause 4.3 that '*...the financial instructions will be those currently adopted by the servicing authority (Leicestershire County Council)*'. These Rules set out the main financial management requirements of Leicestershire County Council as adapted to reflect the ESPO Management Committee as a joint committee arrangement. They state what these are and who is responsible for preparing, authorising and acting on them. The Rules apply to the ESPO Management Committee and to management and officers of ESPO. They also apply to any person acting on behalf of ESPO.

(b) The Management Committee shall make arrangements for the proper administration of the financial affairs and they do this through the Consortium Treasurer. The Management Committee may make, amend or revoke the Financial Regulations and Standard Financial Instructions at any time and the Consortium Treasurer will be responsible for ensuring that they are followed. The Standard Financial Instructions will be proposed by the Director of Corporate Resources as Chief Finance Officer and will not form part of these Rules. The Standard Financial Instructions will cover the more detailed procedures required for the control of capital programme and revenue budgets, contracts, ordering, payments, imprest accounts, stocks and assets, income collection, banking, insurance and unofficial funds.

#### **RULE 2**

##### **Responsibility of the Consortium Treasurer**

(a) The Consortium Treasurer is responsible for the proper administration of ESPO's financial affairs, on behalf of the Management Committee.

(b) Having informed the Chief Officer Group (COG), the Consortium Treasurer will report to the Management Committee if in his or her opinion any significant failure in the proper administration of ESPO's affairs is occurring.

(c) To fulfil his or her statutory duty the Consortium Treasurer may issue Accounting Instructions to complement these Rules and the Standard Financial Instructions.

(d) ESPO's Assistant Director - Finance will be responsible for the provision of corporate budgeting and accounting systems, including the establishment of reserves and provisions.

(e) In monitoring the application of these Rules and the Standard Financial Instructions, the Consortium Treasurer will identify (and propose to the Management Committee) any amendments to them which would enable ESPO to take advantage of developments in electronic methods, provided that any such amendments would retain a degree of security which is similar to that provided by traditional paper-based systems.

### **RULE 3**

#### **Responsibility of the ESPO Director**

(a) The ESPO Director is responsible for the management of the resources made available to him or her to achieve ESPO's objectives and to meet the ESPO Business Plan. When doing this he or she must act in accordance with these Rules and Standard Financial Instructions. He/she should also follow any financial requirements laid down in the Management Committee's Consortium Agreement, Constitution and Contract Procedure Rules. Where responsibilities for management of resources are delegated, the ESPO Director should ensure that the authorised person is familiar with these Rules, the Contract Procedure Rules, and the Standard Financial Instructions.

(b) The ESPO Director should also make authorised persons aware of financial requirements contained in Acts and associated Parliamentary directives specific to the services for which they are responsible.

(c) The ESPO Director when deciding to delegate authority to a representative should consider the duties of that representative in relation to the level of delegated authority. He / she may choose to place financial limits on the authorisation levels allowed.

(d) The ESPO Director must consult and take into account financial advice given by the Consortium Treasurer including guidance on delegation of budgets. The ESPO Director is also responsible for providing financial information when requested by the Consortium Treasurer.

(e) The ESPO Director should ensure that corporate guidance is followed with respect to the governance and financial aspects of partnerships.

(f) The ESPO Director must ensure that a financial control framework is in place for the operation of key partnerships.

### **RULE 4**

#### **Application to subsidiary accounts**

These Rules and the Standard Financial Instructions will apply to all accounts maintained by ESPO including subsidiary accounts. The Management Committee may make special arrangements, however, to take account of the different needs of such accounts.

### **RULE 5**

#### **Changes to service provision**

Where the Management Committee considers there may be a need to change the policy on provision or delivery of services, it shall consider a written report by the Director of ESPO and Consortium Treasurer. In this the ESPO Director will be required to set out the need for the change and the resources implications. The expected financial implications should include both part year and full year effects. In addition, if material changes are expected to occur in the longer term a financial assessment of these should be included. If necessary, the statutory authority to incur expenditure or raise income should also be included.

### **RULE 6**

#### **Changes in expenditure levels**

Any new or increased level of expenditure, unsupported by equivalent changes in income whether capital or revenue, shall be properly authorised before any commitments are entered into. Funding arrangements must be agreed in accordance with these Rules or the Standard Financial Procedures.



## **RULE 7**

### **Capital programmes**

(a) The ESPO Director will prepare proposals for capital expenditure programmes, in consultation with relevant technical advisors, covering the categories and years and within any guidance and guidelines specified to them by the Management Committee. These proposals will be in a form prescribed by COG and will include both the capital costs and an estimate of the full additional annual revenue implications. The Management Committee will consider and approve these.

(b) Inclusion of projects in a capital programme shall not override any requirement to obtain approval to new policies or changes in policies.

(c) When the Management Committee has given its approval, capital expenditure included in the first year of the programme may commence without further approval unless this is required by Government Departments or other outside bodies.

(d) Commencement before the planned programme year can be approved by the Consortium Treasurer provided he/she is satisfied that resources are available within the overall programme.

(e) A renewals reserve will be maintained for the replacement of operational capital assets. The annual charge to replenish this fund will be included within ESPO annual budgets and subject to Management Committee approval.

(f) The routine replacement of minor value operational capital assets that are fully funded within the renewals reserve are excluded from (a) to (c) above and may be replaced subject to the ESPO Director's approval

## **RULE 8**

### **Implementation and amendment of approved capital programme**

(a) When the capital programme has been approved, the ESPO Director will be responsible for controlling expenditure on each project agreed.

(b) Amendments to the capital programme, including their revenue implications, will be subject to the arrangements outlined in the Standard Financial Instructions.

## **RULE 9**

### **Capital expenditure - accountability and performance**

The Management Committee will make arrangements through the Consortium Treasurer to control and monitor total capital spending. The Management Committee will receive financial statements. The Consortium Treasurer will also report the final position to the Management Committee.

## **RULE 10**

### **Financial planning**

(a) The Management Committee may require that the ESPO Director prepares estimates within any specified guidelines of future expenditure and income to cover a stipulated time period. The plans will be prepared in a form specified by the Consortium Treasurer. The plans will be considered by the Management Committee and they will include such additional information and explanations as may be required by the Management Committee.

(b) Where Government Departments and other bodies require submissions of estimates of expenditure and income in future years, these shall be in accordance with plans and policies approved by the full Management Committee or the Consortium Treasurer. They must also comply with any guidance given by the Consortium Treasurer. No new expenditure shall be committed in

advance of the approval of the annual budget unless this is agreed by the Management Committee or the Consortium Treasurer. Where necessary expenditure to ensure continuation of services to Member Authorities and other customers is required this will be done with the agreement of the Consortium Treasurer and reported to the Management Committee.

## **RULE 11**

### **Annual budgets and medium term financial plans**

(a) The ESPO Director will be responsible for preparing annual revenue budgets of expenditure and income and for the preparation of medium term financial plans. These will be prepared following such guidance and within such limits as specified by the Management Committee or Consortium Treasurer.

(b) The medium term financial plan including the annual revenue budget will be approved by the Management Committee.

## **RULE 12**

### **Implementation and amendment of approved budgets and plans**

(a) When the annual budget has been approved the ESPO Director will be responsible for ensuring that budgeted expenditure remains compatible and appropriate to volume of business and the level of incomes to ensure that ESPO continues to generate an operating surplus. Expenditure that is not directly dependent upon business volumes must remain within budget.

(b) The Management Committee will be responsible for maintaining a control over ESPO's trading surplus and for ensuring that expenditure remains appropriate to the level of income.

(c) Amendments to the approved annual Budget will be subject to the virement arrangements specified in the Standard Financial Instructions.

## **RULE 13**

### **Accountability and performance**

(a) Procedures for the collection of income and making of payments against approved expenditure will be laid down in the Standard Financial Instructions.

(b) The ESPO Director will be responsible for ensuring that appropriate arrangements are made, on a regular basis, to monitor performance against budgets and financial forecasts. Any potential significant financial difficulties or exceptional benefits shall be reported in writing immediately to the Consortium Treasurer who will notify the COG.

(c) The Management Committee will receive regular budget monitoring reports from the ESPO Director and will monitor overall performance.

(d) The ESPO Director will prepare annual management accounts and statutory Statements of Accounts under the guidance of the Consortium Treasurer who will ensure they meet appropriate accountancy standards and comply with relevant legislation. The ESPO Director and Consortium Treasurer will prepare a summary of these accounts for approval by the Management Committee

## **RULE 14**

### **Reviews**

(a) The ESPO Director is responsible for undertaking regular reviews of services under her control. In particular, consideration should be given to actual performance against approved targets for the service and the requirements of Best Value.

(b) When undertaking reviews the ESPO Director will need to take into account guidance provided by the Management Committee in their capacity of review co-ordinator.

(c) The Management Committee may require the ESPO Director to report on the performance of any aspect of the services within his or her area of responsibility. This would include the results of comparative performance and value for money studies. The extent of the review will be bound by the terms of reference and the rules relating to the ESPO Management Committee. In addition it may require them to provide explanations on performance indicators and other related information published by the Government.

## **RULE 15**

### **Internal audit**

(a) 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.

(b) The Consortium Treasurer or an authorised representative has authority to:-

- (i) enter any ESPO building or land at all reasonable times;
- (ii) have access to all records, documents and correspondence relating to any transactions of ESPO;
- (iii) receive such explanations as he or she considers necessary on any matter under examination; and
- (iv) require any employee of ESPO to produce cash, stores or any other ESPO property under his or her control.

(c) The ESPO Director will be responsible for considering and taking appropriate action on matters drawn to her attention by audit reports.

## **RULE 16**

### **Internal control and check**

The duties of staff concerned with financial transactions should, as far as is practicable, be distributed with regard to the principles of internal control and check. The ESPO Director should consult the Consortium Treasurer (or authorised representative) when this is not considered practicable or when changes to financial arrangements are being proposed so that the Consortium Treasurer or his or her authorised representative can ensure proper financial systems will still be in place.

## **RULE 17**

### **Financial irregularities**

The Management Committee and the Consortium Treasurer shall be notified immediately by the ESPO Director of any financial irregularities, or of any circumstances which may suggest the possibility of an irregularity, affecting any asset of ESPO or that may result in a legal claim or an insurance claim or that represents a risk to the organisation.

## **RULE 18**

### **Appointment of employees**

Proposals made by the ESPO Director to appoint employees or alter grades need to take into account both current and future years funding and potential termination costs, where the proposals relate to a fixed time scale and the pay and conditions of the Servicing Authority.

## **RULE 19**

### **Redeployment or redundancy**

(a) Prior to making a decision which has redundancy implications the Management Committee should be informed by the ESPO Director of the potential number of staff involved and the funding arrangements to pay the redundancy and associated costs.

(b) When preparing an Action Plan, the ESPO Director will have due regard to the requirements of Organisational Change Policy and Procedure and policy of the Service Authority on Termination in the interests of the efficiency of the organisation. The ESPO Director shall consult the Consortium Treasurer over the funding arrangements for the Action Plan proposals.

## **RULE 20**

### **Personnel rules**

The ESPO Director must abide by any rules approved by the Management Committee under powers delegated to him or her, which are mandatory to the organisation.

## **RULE 21**

### **Property records and deeds**

(a) A terrier of all land, buildings and interests owned by the Servicing Authority in trust for the benefit of the Consortium will be maintained by the Consortium Treasurer in a form approved by the Consortium Secretary.

(b) The Consortium Secretary will be responsible for the custody of all title deeds.

## **RULE 22**

### **Property acquisition, disposal and review**

(a) The Management Committee will be responsible for acquisition, disposal and allocation of land and buildings as requested by the Consortium Treasurer.

(b) The Consortium Treasurer will be responsible for a continuing review both of the purpose for and the efficient utilisation of all land and buildings owned or used by the organisation. He or she will provide regular reports on these subjects to the Management Committee.

(c) The Consortium Treasurer will regulate the administration of the purchase, lease or disposal of land and buildings.

## **RULE 23**

### **Property management**

(a) The ESPO Director will undertake the responsibilities of a tenant for the properties used including management, repair and maintenance, unless specifically agreed otherwise with the Consortium Treasurer.

(b) He or she shall take advice from the Consortium Treasurer on leasing, letting and changes in use of property. He or she should also take advice from him or her on maintenance and property management. It is important that special attention is given to compliance with Fire Certificates and Health and Safety Regulations.

(c) The Director of Corporate Resources of the Servicing Authority will act as the landlord for consortium properties held in trust by the Service Authority. In addition where buildings have joint use he or she may also undertake some of the responsibilities of the tenant.

## **RULE 24**

### **Information and communication technology**

(a) **Corporate ICT Strategy** The ESPO Director will comply with those sections of the Servicing Authority's Information and Communication Technology Strategy that are mandatory for the provision of ESPO IT service including links with the Servicing Authority ICT service. When appropriate, the Servicing Authority' Head of ICT should be consulted on proposed new computing systems and on significant enhancements to systems and equipment. He or she may provide specialist advice or stipulate the technical standards and specifications which will apply and will ensure there will be satisfactory links with the Service Authority systems.

(b) **System Developments and Amendments** Where developments of/or material amendments to systems take place that affect financial procedures, the ESPO Director shall inform the Consortium Treasurer. The Consortium Treasurer or his or her authorised representative will stipulate the standards of control required.

(c) **Control and Security** ESPO's Assistant Director Finance is responsible for the control of ESPO computer systems, and also responsible for the security and privacy of data held by these systems. Where the Servicing Authority's and other users' systems are accessed, they are responsible for ensuring proper controls are maintained. Guidance on how to carry out these responsibilities is included in the Servicing Authority ICT Strategy, together with supplementary advice from the Servicing Authority's Head of ICT.

## **RULE 25**

### **Purchasing and income collection**

Purchasing and collection officers must follow the requirements laid down by the Management Committee in these Rules, the Contract Procedure Rules, the Standard Financial Instructions and the Scheme of Delegation.

## **RULE 26**

### **Inventories of assets**

(a) The ESPO Director will be responsible for the safe keeping and condition of ESPO assets under her control. He or she will also maintain an up to date inventory. The ESPO Director and Consortium Treasurer will issue instructions on which assets should be included in these other than Property (Rule 21).

(b) The Management Committee will have power to make Standard Financial Instructions on the checking, usage and disposal of assets.

## **RULE 27**

### **Stocks and stores**

(a) The ESPO Director will be responsible for the custody and physical condition of the stocks and stores under her control. The levels of stocks shall not exceed reasonable requirements.

(b) The Management Committee will have power to make Standard Financial Instructions on the control, checking, valuation and disposal of stocks.

## **RULE 28**

### **Risks and liabilities**

The ESPO Director should have due regard to operational and financial risks and liabilities when considering policies. He or she also needs to consider potential physical risks to persons and assets. In doing so he or she needs to follow the ESPO risk management framework.

## **RULE 29**

### **Insurance**

The ESPO Director will be responsible for arranging or amending insurance cover. This will be in accordance with policies laid down by the Management Committee.

**[End of Financial Procedure Rules]**

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## Standard Financial Instructions

These instructions are included here for the sake of completeness and will be updated as necessary to reflect any amendments made.

### Standard Financial Instructions

(made under Rule 1(b) of the Financial Procedure Rules)

#### INSTRUCTION 1

##### Capital - expenditure in excess of approved amount

(a) Where a specific approval given in the capital programme is likely to be exceeded additional approval must be sought by the Consortium Treasurer and reported to the Management Committee.

(b) The ESPO Director may approve increases in expenditure where compensating savings are being made and there is no change in policy. In any particular instance, the ESPO Director may decline to give approval and instead refer the proposal to the Management Committee.

#### INSTRUCTION 2

##### Capital - substitution

Following consultation with the Consortium Treasurer the ESPO Director may make written recommendations to the Management Committee that it substitute items of capital expenditure. This may only be done if the capital expenditure of the department and the resulting revenue costs are not increased. Substitutions of up to £100,000 may be approved by the Consortium Treasurer.

#### INSTRUCTION 3

##### Grants and External Funding

Unless already included in the ESPO Budget bids for external funding must be agreed with the Consortium Treasurer. He or she can approve bids where there is no additional one off or ongoing costs to ESPO for which there is no budget, capital programme or other provision.

Approval must be obtained from the Consortium Treasurer to any contingent liabilities for repayment should any conditions not be met, with any associated agreement being made with the approval of the Consortium Secretary.

In other cases the approval of the Management Committee is required.

#### INSTRUCTION 4

##### Revenue - virement

(a) In order to maintain effective and responsive services it is acknowledged that spending on individual budget heads may vary from the approved budget. This is permissible (subject to (b) and (c) below) so long as the total surplus complies with Rule 12 of the Financial Regulations.

(b) Virement (either between individual lines or sections of the approved budget) is allowed except where it would involve:-

- i. a change in an existing policy;
- ii. a reduction in service;
- iii. on-going net costs which might not be containable;
- iv. funding capital expenditure from revenue (except for items and exceptions agreed by the Management Committee); or
- v. expenditure which has been included in that year's budget for service improvements above the limit of £20,000 or 5% whichever is the greater.

The above will require the prior approval of the Management Committee.

(c) Before submitting a virement proposal which falls under (b) above to the Management Committee for approval, the ESPO Director shall consult the Consortium Treasurer and shall include in her report to the Management Committee the justification for the change in priorities and any comments of the Consortium Treasurer. If the expenditure proposal is for longer than the current financial year, the ESPO Director must demonstrate that the proposed corresponding saving will also be continuing. This change will then be built into the ongoing budget.

(d) Regular budget monitoring reports shall be made to the Management Committee by the ESPO Director identifying the main variations in expenditure in order that virement can be questioned as appropriate.

## **INSTRUCTION 5**

### **Revenue - supplementary estimates**

(a) A supplementary estimate approval means that not only do individual budget approvals increase, but the total approved ESPO budget increases beyond the limit imposed by Rule 12 of the Financial Regulations. Requests must be approved by the Management Committee. The Consortium Treasurer must be consulted before a report written by the ESPO Director is submitted to the Management Committee.

(b) Requests should result only from new legislation or other unforeseen and exceptional circumstances. The ESPO Director would be expected to show virement is not available to fund the proposal. Supplementary estimates may be approved but budget adjustments deferred whilst it becomes clearer whether costs can be met from elsewhere within the relevant budget.

(c) No expenditure should be committed prior to Management Committee approval subject to the terms of the Agreement.

## **INSTRUCTION 6**

### **Revenue - carry forward of over or underspendings**

(a) The Management Committee may authorise adjustments in ESPO's current year's capital or revenue budgets for underspendings or overspendings incurred in the previous financial year.

(b) For exceptional circumstances, the Consortium Treasurer may agree the carry forward of an underspending on all budgets subject to any guidelines laid down by the Management Committee. He or she may do this only when the total budget is underspent by more than the requested carry forward.

## **INSTRUCTION 7**

### **Contracts**

(a) All contracts should be dealt with in accordance with the Contract Procedure Rules for ESPO.

### **Capital Contracts (Excluding routine replacements from Renewals Reserves)**

(b) The ESPO Director will be responsible for the maintenance of all financial as well as technical records for contracts of a capital nature.

(c) Where building, construction or other capital contracts provide for payment to be made by instalments on the certificate issued by an authorised employee, the records must show the state of account on each contract between ESPO and the contractor together with other payments and related professional fees.

(d) Payments to contractors in respect of all contracts must be authorised only by a certificate signed by the person made responsible by the contract for issuing such certificates (i.e. "the Certifying Employee" or authorised deputy). In the case of Private Architects, Quantity Surveyors,

Engineers or Consultants, certificates must be countersigned as to validity by the appropriate Director who appointed them. The form of the certificate must be agreed by the Consortium Treasurer. The Certifying Employee will be responsible for the correct certification of all aspects of contract payments and for ensuring the correct completion of all associated contract documentation.

(e) The Certifying Employee will ensure that all contract documentation is properly completed before the contractors' final account is paid.

(f) Prior to issue of final certificates the Consortium Treasurer will, to the extent he or she considers necessary, audit accounts for contracts. He or she will be entitled to make all such enquiries and receive such information and explanations as he or she may require in order to satisfy himself or herself as to the accuracy of the accounts.

(g) The ESPO Director should actively try to promote an agreement with contractors on outstanding issues, where work was completed over two years ago.

(h) Claims from contractors in respect of matters not clearly within the terms of any existing contract must be referred to the Consortium Secretary for consideration of ESPO's legal liability before a settlement is reached. The Consortium Treasurer must also be informed of the amount of such claims before final settlement to enable him or her to consider the financial implications.

(i) Where completion of a contract is delayed beyond the due date for completion by more than one-sixth of the contract period, it will be the duty of the responsible employee under the contract, after consultation with the Consortium Secretary and spending department, to take appropriate action in respect of any claim for liquidated damages. The responsible employee may decide that liquidated damages should not be applied. This should be reported to the Management Committee subject to any guidelines set down by the Management Committee.

### **Professional Fees**

(j) Where staff are not charged to projects on a fee basis, the ESPO Director will supply the Consortium Treasurer with details of the cost of staff and private consultants employed on capital work.

(k) In all cases an agreement with a private firm or individual shall require them to comply with the Contract Procedure Rules and to give the same facilities to the Consortium Treasurer as required of the ESPO Director by its instructions and procedures.

(l) Where private consultants are to supervise work, the ESPO Director is responsible for ensuring that she receives regular written reports covering the physical and financial progress of that work and for taking any appropriate action on the basis of progress reports.

## **INSTRUCTION 8**

### **Orders for work, goods and services**

(a) Orders for work, goods and services must not be placed unless the expenditure to be incurred is in accordance with the Financial Regulations and these Instructions.

(b) Orders on official forms must be issued for all work, goods and services to be supplied to ESPO, except for supplies of public utility services such as gas, electricity and water, for periodical payments such as rent and rates, for petty cash purchases, for procurement card and e-procurement transactions allowed under the scheme approved by the Consortium Treasurer, or for such other exceptions as the Consortium Treasurer may approve.



(c) Where urgent orders are given orally they must be confirmed by a written official order not later than the next working day following the day in which the oral order is given. Confirmation orders should be clearly marked as confirmation only.

(d) Some agreements or contracts for goods or services provide for payment by instalments. To show the state of the accounts of each such agreement or contract, the ESPO Director will ensure such records are maintained in a manner agreed with the Consortium Treasurer.

(e) Official order forms will be used unless the Consortium Treasurer has agreed in particular cases to the use of other forms for specific classes of transaction. Orders must be signed only by employees designated by the ESPO Director who will maintain a list of employees authorised to sign on his or her behalf and their relevant financial approval limits. Before placing an order the certifying employee must satisfy himself or herself that this would be proper expenditure and would be within the appropriate approved estimate. To provide segregation of duties at as early a stage as possible, it is recommended that a second employee should be responsible for making out the order.

(f) The ESPO Director will be responsible for ensuring the validity of all orders issued the control process and for obtaining alternative quotations or tenders as required before orders are placed. He or she will also be responsible for ensuring that the expenditure being incurred can be met from the approved estimates.

(g) ESPO must obtain goods, works or services in a manner and from sources which demonstrate best value for money.

## **INSTRUCTION 9**

### **Payments of invoices and claims**

(a) Invoices should be on suppliers printed forms except where alternative arrangements have been agreed by the Consortium Treasurer. The system within spending departments should ensure that expenditure has been certified by an employee authorised by the ESPO Director.

(b) Suppliers invoices and claims shall be checked, initialled and certified in accordance with arrangements agreed with the Consortium Treasurer before payment is made.

(c) The ESPO Director will ensure that a list of officers authorised to certify accounts is maintained. The verification and certification of accounts must be in accordance with instructions issued by the Consortium Treasurer.

(d) Before certifying an invoice or claim the certifying employee must satisfy himself or herself that it is allocated to the correct expenditure head.

(e) ESPO's Assistant Director - Finance will examine, so far as he or she considers necessary, invoices and claims passed for payment and he or she will be entitled to receive such information and explanations as he or she may require. For this purpose all books and documents relating to the payment must be placed at his or her disposal.

(g) All claims for the payment of vehicle and subsistence allowances, travelling and incidental expenses, must be certified and submitted to the ESPO Director. These will be on a form approved by her, unless alternative arrangements have been agreed by her. Claims must be submitted promptly each month for the preceding month. Travel and subsistence claims which are for a period over 3 months old will not be paid unless there are extenuating circumstances.

(h) Where ESPO's Assistant Director - Finance considers it appropriate he or she will call the attention of the Consortium Treasurer and, if necessary, the Management Committee to any item

which has been passed for payment. He or she will also report to the Management Committee on any such item which he or she considers for any good reason should not be paid.

## **INSTRUCTION 10**

### **Imprest accounts and Procurement Cards**

(a) The ESPO Director may in consultation with the Consortium Treasurer, provide imprest accounts where necessary for defraying petty cash and other minor expenses. Persons responsible must maintain a record of their receipts and payments in the form and manner prescribed by the Consortium Treasurer.

(b) ESPO's Assistant Director – Finance may in consultation with the ESPO Director, provide Procurement Cards (pCards) or ESPO bank's business cards where the type of spend or the practicalities preclude the purchaser from using the ESPO's usual ordering and invoicing processes in an efficient way. Persons responsible must ensure the cards are only used in accordance with ESPO's scheme, for the approved purposes of the organisation and that appropriate records are maintained.

(c) The ESPO Director may issue instructions as to the type and level of expenditure which should be met out of the imprest account or with cards. Such expenditure must be supported by receipted vouchers to the extent that the Director may require.

(d) The holder of the card will be responsible for all transactions performed with their assigned card and must support the scheme administrators in the resolution of queried transactions. The card holder is additionally responsible for providing supplementary information required under the scheme to support VAT claims and updates to ESPO's financial systems. The ESPO Director is required to ensure monitoring is in place to verify that cards within ESPO are used in accordance with ESPO's scheme.

(e) An official subsidiary bank account will be opened by the Consortium Treasurer in cases where he or she considers this to be necessary. Where such a bank account is opened in no circumstances will an overdraft be allowed.

(f) ESPO's Assistant Director - Finance must arrange for the ESPO Director or her authorised representative to be notified as early as possible whenever a person holding an imprest account ceases to be responsible for the account. The name of the new holder will be similarly notified when this is known. Equally the ESPO Director must be notified when a card holder leaves ESPO to allow withdrawal or amendment of the card as appropriate.

(g) No income received on behalf of ESPO, other than the reimbursement received from the Consortium Treasurer, may be paid into an imprest account without prior consent of the Consortium Treasurer. Income must be banked separately or paid to ESPO as described elsewhere in these procedures.

(h) Cards and imprest accounts are provided to allow employees to carry out their duties in a more efficient manner and are not provided for personal use. Specifically postal orders or personal or other cheques must not be cashed from monies held in an imprest account. Personal loans must not be made from such accounts, nor should loans be made to unofficial funds. Any accidental use must be reported to the ESPO Director and Consortium Treasurer as soon as it is discovered and ESPO reimbursed.

(i) Reimbursement of monies spent should be made by ESPO Finance staff in line with instructions issued by the Consortium Treasurer, except where he or she agrees to provide payments on account. In all cases imprest accounts will be made up to 31 March each year, subject to any exceptions agreed by the Consortium Treasurer. The Consortium Treasurer will determine the method of payment to settle the outstanding balances on cards.

## **INSTRUCTION 11**

### **Stocktaking and consequential action for ESPO Central Stores stocks held for resale.**

(a) Stocks and stores records must be kept in such cases and in a form as may be agreed by the ESPO Director and subject to approval by the Servicing Authority's internal audit on behalf of the Consortium Treasurer. There must be a complete physical stocktaking at the closure of every financial year following procedures approved with the Servicing Authority's internal audit and approved by ESPO external auditors. The exception to this is where continuous stocktaking arrangements, agreed with the Consortium Treasurer (or their authorised representative), are operating. Test checks will also be made from time to time.

(b) The value of stocks held at 31 March each year must be certified by ESPO's Assistant Director - Operations or their authorised representative and supplied to ESPO's Assistant Director - Finance for inclusion in the Statement of Accounts

(c) Surpluses or deficiencies revealed during stocktaking must be reported to the ESPO Director, or their authorised representative, who can approve all write-ons/off. Deficiencies due to irregularity, or where a write on/off results in out of budget spend, should be raised with the Consortium Treasurer (or their authorised representative) and reported to the Management Committee if the Consortium Treasurer (or their authorised representative) considers this appropriate.

d) Surplus or obsolete items of stocks and stores may be disposed of by the ESPO Director or their authorised representative. A record should be kept of all details relating to disposals.

## **INSTRUCTION 12**

### **Inventories and consequential action**

(a) All inventories will be kept in a form approved by the Consortium Treasurer (or their authorised representative). Where a computerised inventory is in use, its method of operation should conform to standards set down by the Consortium Treasurer (or their authorised representative).

(b) The ESPO Director will be responsible for ensuring that an annual check of all items on the inventory is carried out and for taking action in relation to any surpluses or deficiencies and noting the inventory accordingly. Deficiencies due to irregularity, or where a write on/off results in out of budget spend, should be raised with the Consortium Treasurer (or their authorised representative) and reported to the Management Committee if the Consortium Treasurer (or their authorised representative) considers this appropriate.

(c) The Consortium Treasurer or their representative may at all reasonable times have access to all property of ESPO and may make such checks and tests as he or she deems reasonable.

(d) ESPO's property must not be removed from the premises except in the ordinary course of business, or used otherwise than for business purposes except in accordance with specific directions issued by the ESPO Director or her authorised representative and agreed by the Consortium Treasurer (or their authorised representative). A record of such removals will be maintained at the establishment concerned.

(e) none

(f) The ESPO Director or her authorised representatives should follow standard corporate procedures for the redistribution, sale or disposal of surplus items of computer and ICT equipment.

These procedures will be subject to approval by the Consortium Treasurer (or their authorised representative).

### **INSTRUCTION 13**

#### **Income records and grant claims**

(a) The collection of all monies due to ESPO should be under the control of ESPO's Assistant Director - Finance and must follow procedures approved by the Consortium Treasurer. He or she will require that all monies due are promptly recorded and all monies are promptly banked.

(b) The records kept relating to income will be in such form as may be approved by the Consortium Treasurer.

(c) All official receipt forms, receipt books, tickets and other documents of a similar nature will be ordered, controlled by, and issued by ESPO Finance staff following procedures approved by the Consortium Treasurer. Every issue of any such document should be authorised by ESPO's Assistant Director - Finance or his or her nominated officer and acknowledged by the signature of the employee receiving the document.

(d) No employee or agent shall give a receipt for money received on behalf of ESPO on any form other than an official receipt form.

(e) ESPO Finance staff must maintain a record of their receipts and bankings in the form and manner approved by the Servicing Authority's internal audit on behalf of the Consortium Treasurer. The Consortium Treasurer will issue instructions regarding the frequency of deposit.

(f) In accordance with the Accounts and Audit Regulations, each officer paying money into a bank account of ESPO must show on the paying slip the amount of each cheque paid in and sufficient information to identify the individual transaction, e.g. receipt number, name of debtor.

(g) Monies received by an accounting officer will be banked intact and must not be used to meet expenditure or to cash postal orders or personal or other cheques.

(h) ESPO's Assistant Director - Finance should ensure that all grants and external funding income is promptly claimed and proper records and working papers are retained to justify claims.

### **INSTRUCTION 14**

#### **Write-offs and amounts owed to ESPO**

(a) An amount due to ESPO must only be discharged by payment or by write-off

(b) Any amounts to be written-off must be approved by the ESPO Director or their authorised representative.

(c) Deficiencies due to irregularity, or where a write off results in out of budget spend, should be raised with the Consortium Treasurer (or their authorised representative) and reported to the Management Committee if the Consortium Treasurer (or their authorised representative) considers this appropriate.

### **INSTRUCTION 15**

#### **Review of charges**

(a) The ESPO Director shall ensure that all charges for ESPO services are reviewed at least annually at the time of the preparation of the budget. Rents should be reviewed at least triennially unless they are subject to any longer review period under the terms of the rental agreement.

(b) The ESPO Director will be free to decide on detailed pricing for non-member authority work, though they must seek to make a profit on all such activity. Where services are supplied to a Member Authority differential charges may apply, any charges should not, as a matter of principle, seek to make a profit.

(c) Where it is proposed to introduce, revise, or discontinue a scale of charges, the Consortium Treasurer should be consulted before the proposal is progressed. Where increases are proposed in line with increases in the cost of living these may be approved by the ESPO Director in consultation with the Consortium Treasurer and the Management Committee. Authority to agree changes in charges otherwise than set out above may be delegated to the ESPO Director subject to guidelines laid down by the Management Committee.

## **INSTRUCTION 16**

### **Banking arrangements**

(a) Arrangements with regard to the ESPO's bank accounts, including Giro Bank accounts, will be made by the Consortium Treasurer.

(b) Cheques, except those used by imprest accounts, will be ordered and controlled by ESPO's Assistant Director - Finance who will make proper arrangements for the safe custody of blank cheques and the preparation, signing and despatch of cheques subject to the approval of the Consortium Treasurer.

(c) All ESPO bank accounts, including imprest accounts, must include "ESPO" in their titles and in no circumstances must an account be opened in the name of an individual or individual establishment.

(d) Cheques drawn will be signed by the ESPO Director or by an employee duly authorised by the Consortium Treasurer. Cheques over £20,000 will require signing by two authorised employees.

## **INSTRUCTION 17**

### **Salaries, wages and pensions**

(a) The payment of all salaries, wages, pensions, compensation and other emoluments will be made by the Consortium Treasurer or under arrangements approved and controlled by him or her.

(b) The ESPO Director will arrange for the Consortium Treasurer to be notified as early as possible, and in the form prescribed by him or her, of all matters affecting the payment of items referred to paragraph (a) above and in particular:

(i) appointments, resignations, dismissals, suspensions, secondments and transfers;

(ii) absences from duty for sickness or other reason, apart from approved leave;

(iii) changes in remuneration, other than normal increments and pay awards and agreements generally applied; and

(iv) information necessary to maintain records of service for superannuation, income tax and national insurance.

(c) Tax, superannuation, national insurance and all other deductions from pay and related matters must be agreed with the Consortium Treasurer.

(d) All time records or other documents relating to salaries and wages will be in a form prescribed or approved by the Consortium Treasurer and shall be checked and authorised. They should be signed by or on behalf of the ESPO Director. The Consortium Treasurer will provide periodic print-outs of employees' pay details to provide a means of verifying the accuracy of the pay records.

(e) The Consortium Treasurer on proposed payments to non-staff members which may require ESPO to deduct tax.

## **INSTRUCTION 18**

### **Insurance of risks**

(a) The ESPO Director will arrange that the Consortium Treasurer is notified promptly of all new risks, properties, plant or vehicles which require to be insured. He or she should indicate the amount of cover required and of any alterations required to existing insurances.

(b) The ESPO Director will arrange that the Consortium Treasurer is notified immediately in writing of any fire, loss, liability or damage, or any event likely to lead to a claim.

(c) The ESPO Director must obtain the prior approval of the Consortium Treasurer and the Consortium Secretary to the terms of any indemnity which ESPO is requested to give.

(d) The ESPO Director may, at her own discretion, arrange to provide insurance cover against risks not normally covered by ESPO as a whole. Such cover must be arranged via the Consortium Treasurer.

## **INSTRUCTION 18A**

### **Litigation and Disputes Resolution**

The ESPO Director will ensure, following consultation with the Consortium Treasurer and Consortium Secretary that the Management Committee is advised at key stages in the process of any litigation or disputes resolution which have a significant financial or reputational effect on the Member Authorities.

## **INSTRUCTION 19**

### **Security of assets**

(a) The ESPO Director is responsible for ensuring that arrangements are made for maintaining proper security at all times for all buildings, stocks, stores, furniture, equipment, cash, etc. under his or her control. She will consult the Chief Constable and the Consortium Treasurer in any case where security is thought to be defective or where it is considered that special security arrangements may be needed.

(b) Maximum limits for cash holdings will be agreed with the Consortium Treasurer and must not be exceeded without his or her express permission.

(c) Safes must be kept locked and the key removed. ESPO's Assistant Director - Finance must ensure that arrangements are made for the safe custody of keys to safes and similar receptacles. The loss of any such keys must be reported to the Consortium Treasurer immediately.

## **INSTRUCTION 20**

### **Unofficial funds**

(a) Where an employee of ESPO, by reason of his or her employment with the ESPO, has any responsibility for a fund other than an official fund, this is deemed to be an unofficial fund under this Rule. It should be the responsibility of the ESPO Director to be aware of the existence of all unofficial funds involving employees under her control, and to arrange for a regular review of the completeness and accuracy of records and arrangements.

(b) The ESPO Director will agree with the Consortium Treasurer the type and extent of audit required for each particular fund, after taking into account the nature of activities covered, and the degree of risk. In no circumstances must unofficial monies be mixed in with official receipts for ESPO. Where several unofficial funds are kept by the same employee, the funds should always be separate and readily identifiable.

**[End of Standard Financial Instructions]**

**APPENDIX 7**  
**TO THE CONSTITUTION OF THE ESPO MANAGEMENT COMMITTEE**  
**CONTRACT PROCEDURE RULES OF THE ESPO MANAGEMENT COMMITTEE**

**Eastern Shires Purchasing Organisation**  
**(ESPO)**

# **Contract Procedure Rules**

**(Revised and approved from 1 July 2019 by the ESPO Management Committee 19  
June 2019)**

## ESPO Contract Procedure Rules

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

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

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

### GENERAL

#### RULE 1

##### *Compliance*

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

#### RULE 2

##### *Delegation*

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



## **RULE 3**

### ***Interpretation***

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

## **RULE 4**

### ***Application***

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

- (i) for only the acquisition or disposal of any interest in land;
- (ii) for the lending or borrowing of money;
- (iii) of employment (making an individual a direct employee of ESPO); or
- (iv) procured on behalf of and made by an ESPO Client that has agreed that the procurement of the Contract shall be conducted in accordance with its own contract procedure rules.

## **PROCUREMENT PRINCIPLES**

## **RULE 5**

### ***General Requirements***

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

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

## **RULE 6**

### ***Exceptions***

- (a) Subject to the requirements of EU Directives, EU Treaties, Acts of Parliament, the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016, the following Contracts may be placed by direct negotiation with one or more suppliers, Contracts:-
  - (i) for supplies, materials, services or works which are available only as proprietary and/or patented articles, services or works from one contractor or supplier and for which the Director of ESPO, on the advice of the appropriate Procurement Service Manager, decides that there is no reasonably satisfactory alternative available in the European Union and for repairs to, or the supply of, parts of existing proprietary or patented articles or works including machinery or plant; a note of that decision and the reasons for it must be retained on the appropriate file and where the Contract is equal to or exceeds £181,302, a copy of the note and reasons must be provided to the Director of Corporate Resources and the Director of Law and Governance.
  - (ii) for works of art, museum specimens or historical documents;
  - (iii) which constitute a variation or extension of an existing Contract, as permitted by the Contract and/or ESPO's Standard Financial Instructions **subject to** the provisions of Rule 30 (Contract Modifications and Extensions) and Rule 31 (Novation of Existing Contracts);

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

- (b) Other exceptions to these Rules may only be made within the relevant law and with the authority:-
  - (i) of the Director of ESPO, in consultation with the relevant Procurement Service Manager, where the Estimated Value of the proposed Contract is under £181,302. The Director of ESPO shall maintain a record specifying the reason for all such departures; or
  - (ii) of the ESPO Finance and Audit Subcommittee 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 Finance and Audit Subcommittee and Management Committee where appropriate (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 Finance and Audit Subcommittee.
- (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 Finance and Audit Subcommittee in relation to the operation of these Rules including among other things details of the approved exceptions to these Rules and approved extensions to Contract where not provided for in the Contract, and proposed revisions to these Rules and/or changes required to accommodate the requirements of UK and EU procurement law as may be necessary from time to time.

## **RULE 9**

### ***Prevention of Corruption / Conflict of Interest***

- (a) The Employee Code of Conduct (Part 5b of the Servicing Authority's Constitution) applies to any Procurement Exercise.

- (b) The following clause, or a clause that is substantially similar, will be included as a standard term and condition in every written Contract in accordance with Rule 25(c):

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

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

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

- (c) ESPO's Supplier Code of Conduct 2018 applies to any Procurement Exercise.

## **RULE 9 A**

### ***Counter Terrorism and Security Act 2015***

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

## **PROCUREMENT EXERCISE**

### **RULE 10**

#### ***Pre-Estimate***

- (a) Before any Procurement Exercise is begun the Procuring Officer must calculate its Estimated Value in accordance with this Rule. The estimated value for the Procurement must not be subdivided for the purpose of reducing the total value of the contract for multiple procurements.

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

## **RULE 11**

### ***Procurement Exercise Process***

- (a) Based on the Estimated Value, as identified in Rule 10, Table 1 below makes provision for the minimum requirements for the subsequent Procurement Exercise.

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 invitation to quote where appropriate or applicable to the Contract <sup>1</sup> .	Record details. (If three Quotations 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 £181,302	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 £181,302	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))
Relevant 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))



<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.

- (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 standard 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 Standard Selection Questionnaire or the European Single Procurement Document must be used for the selection criteria;
- (c) Selection criteria must be included in the evaluation process where applying the Open Tendering procedure (Rule 15) or must be the only criteria used for the shortlisting methodology where applying the Restricted procedure (Rule 16).

## **RULE 13**

### ***Award Methodology and Evaluation Criteria***

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

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Eastern Shires Purchasing Organisation - A local authority purchasing and distribution consortium  
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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 the Standard Selection Questionnaire or the European Single Procurement Document, where a Restricted Tendering procedure is being used.
- (d) The Contract Opportunity Publication must express the nature and purpose of the Procurement Exercise, stating where further details may be obtained, how and to whom an interested supplier is to respond and any other requirements such as suitability requirements or explanatory information.
- (e) If the Estimated Value exceeds the relevant EU Threshold the Procuring Officer must ensure that the Contract Opportunity Publication is first published 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 any ESPO Client) in advance of the issue of the Standard Selection Questionnaire or the European Single Procurement Document and a copy retained on file.
- (e) All Persons that do not qualify for inclusion on the shortlist to receive an Invitation to Tender must receive notice that they have been excluded from the Procurement Exercise. Any Person requesting in writing the reasons why they were unsuccessful shall be informed by the Procuring Officer of the reasons for ESPO/ESPO Client decision.

### RULE 17

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

The Negotiated Procedure, Competitive Procedure with Negotiation, Competitive Dialogue Procedure and Innovation Partnership Procedure must only be used with the prior approval of the Director of Law and Governance and the Director of Corporate Resources.

## **Rule 17A**

### **Concession Contracts**

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

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

## **RULE 18**

### **Invitations to Tender**

- (a) Every Invitation to Tender must specify the latest day and hour and the place appointed for the receipt of Tenders and must state the effect of Rule 19.
- (b) Procuring Officers must give all Tenderers the same information about the Procurement Exercise and in particular information relating to the tender process, specification, award methodology and evaluation criteria.
- (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 £181,302 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 £181,302 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) Subject to Rule 1, the Director of ESPO shall have the authority to accept a Tender but in any particular circumstance may decline to give approval and refer the decision to the ESPO Management Committee to determine.

## **RULE 24**

### ***Notification of Contract Award***

- (a) The Procuring Officer must notify the successful Tenderer of the acceptance of their Tender and for all Procurement Exercises with an Estimated Value of £5,000 or more this notification must be in writing.
- (b) In the case where the Estimated Value is £25,000 or more the Procuring Officer must notify in writing all Tenderers who submitted a Tender of the decision as soon as possible after the decision has been made.
- (c) Where a Contract with an Estimated Value of £25,000 or more is awarded ESPO must publish information as required by the Public Contracts Regulations 2015 on Contracts Finder within 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.
- (f) The Procuring Officer shall consider the General Data Protection Regulation (GDPR) and Data Protection Act 2018 requirements and shall include in the contract appropriate provisions.

## **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 (in either case ((i) or (ii) above) provided that the Invitation to Tender states:

- (aa) that new suppliers may be added to the Framework Agreement and;
- (bb) how many suppliers can apply to be added to the Framework Agreement and;
- (cc) that the same evaluation criteria and award methodology are applied when deciding whether to award a place on the Framework Agreement to new suppliers as were applied at the time of the original award.

## **RULE 29**

### ***Dynamic Purchasing Systems***

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

## **CONTRACT AMENDMENTS**

### **RULE 30**

#### **Contract Modifications and Extensions**

##### **Contract Modifications**

- (a) Subject to Rule 30(b) below, Contracts may be modified where the value of the modification is;
  - (i) below the current EU Threshold for service/supply/works Contracts; and
  - (ii) is less than 10% of the initial Contract value for service and supply Contracts and less than 15% of the initial Contract value for works Contracts.
- (b) The Director of ESPO in consultation with the appropriate Procurement Service Manager shall be authorised to modify the Contract in accordance with Rule 30(a) above provided:
  - (i) the modification does not alter the overall nature of the Contract; and
  - (ii) where there is, or has been more than one modification, the value shall be the net cumulative value of all modifications for the purpose of Rule 30(a) above.
- (c) 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 £181, 302 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. "Concession Contract" means a works concession Contract or services concession Contract for a pecuniary interest concluded in writing by means of which the concessionaire is entrusted to execute works or provide and manage services (other than the execution of works) to one or more economic operators, the consideration for which consists either solely in the right to exploit the works or the services that are the subject of the Contract or in that right together with payment; and that meets the requirements of Regulation 3(4) of the Concession Contracts Regulations 2016 (CCR 2016).

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

- (i) the award of the Contract must transfer to the contractor the operating risk in exploiting the works or services encompassing demand or supply risk or both; and
  - (ii) the part of the risk transferred to the concessionaire involves real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire is not merely nominal or negligible.
4. "Concession Contracts Regulations 2016" means the Concession Contracts Regulations 2016 as amended, consolidated, extended, re-enacted or replaced. These Regulations implement Directive 2014/25/EU of the European Parliament and of the Council on Public Procurement.
5. "Contract" means a binding agreement between two or more parties for performing, or refraining from performing, some specified act(s) in exchange for lawful consideration.
6. "Contract Extension" means an extension to the duration of the Contract, but not including any alteration to the scope of the Contract.
7. "Contracts Finder" means the web-based portal provided for the purposes of Part 4 of the Public Contracts Regulations 2015.
8. "Contract Opportunity Publication" is the means by which a Procurement Exercise is advertised and includes (where appropriate) the 'Contract Notice' and Contracts Finder as defined in the Public Contract Regulations 2015.
9. "Contract Modification" means an alteration to the scope of the Contract, but not the extension of the duration of the Contract.

10. The “Director of Corporate Resources” is the Director of Corporate Resources of the Servicing Authority, Leicestershire County Council, except in the case of a procurement exercise conducted exclusively for an ESPO Client other than the Servicing Authority, where the advice or authority required under these Contract Procedure Rules has been obtained from the equivalent officer(s) of that ESPO Client.
11. The “Director of Law and Governance” is the Director of Law and Governance of the Servicing Authority, Leicestershire County Council, except in the case of a procurement exercise conducted exclusively for an ESPO Client other than the Servicing Authority, where the advice or authority required under these Contract Procedure Rules has been obtained from the equivalent officer(s) of that ESPO Client.
12. “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.
13. “Electronic Tendering System” means an electronic tendering system approved in accordance with Rule 5 (g) (ii).
14. 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.
15. “ESPO Client” means one or more ESPO member authorities and/or other contracting authorities, for which ESPO is managing a procurement process.
16. “Estimated Value” means the value as estimated under Rule 10.
17. “EU Threshold” means the respective threshold for Services, Supplies, Works or Light-Touch Services contracts referred to in the Public Contract Regulations 2015 and the Concession Contracts Regulations 2016.
18. “E-Tender” means a Tender that has been submitted using an Electronic Tendering System.
19. “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.
20. “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.



21. 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.
22. "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.
23. "Irregular Tender" means a Tender that does not fully comply with the instructions given in the Invitation to Tender.
24. "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.
25. "Light-Touch Services" means those services referred to in regulation 74 and Schedule 3 of the Public Contracts Regulations 2015.
26. "Officer" means an employee of ESPO.
27. "OJEU" means Official Journal of the European Union.
28. "Person" includes a partnership, body corporate or unincorporated association.
29. "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.
30. "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.
31. "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.

32. "Procurement Service Manager" is the most senior Procurement Officer within an ESPO Category Team, and is responsible for managing the team.
33. "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.
34. "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.
35. "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.
36. "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.
37. "Standard Selection Questionnaire" means a questionnaire that complies with the Crown Commercial Service statutory guidance relating to Standard Selection Questionnaires.
38. "Standing List" means a list of Persons which has been established in accordance with Rule 27.
39. "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.
40. "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.
41. "Tenderer" or "Tenderers" means the Person or Persons invited to participate in a Procurement Exercise.
42. "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.
43. "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.
44. Words imparting the masculine include the feminine gender.
45. "Rule(s)" means these Contract Procedure Rules as may be amended from time to time.

#### **[end of Contract Procedure Rules]**

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