

APPENDIX

Proposed Changes to the Contract Procedure Rules for ESPO

Approach:

Applies where ESPO is acting alone or for a wider group of consortium members or for non-members. Where ESPO is acting on behalf of just one of its member, the member's rules stipulating the delegations/responsibilities to/of ESPO will apply, e.g. Rule 33 (Application of these Rules to ESPO) of LCC's Contract Procedure Rules

Balance of operational efficiency (given volume of contracts) against need for checks and balances

Only proposed equivalents/delegations for rules which are operationally significant

ESPO Management Committee, Legal Status of ESPO, 7 March 2003: All Section 151 officers of the constituent authorities have duties placed upon them to ensure the proper administration of the financial affairs of ESPO

ESPO Agreement Between Member Authorities, 21 April 1999, 7.1: Leicestershire County Council will act as the Servicing Authority to ESPO ("the Servicing Authority")

For the purposes of this document, ESPO is considered a department of the Council, with the Director of ESPO a Chief Officer

Note:

The Director of Corporate Resources is the ESPO Treasurer

There is a general delegation from the Director of ESPO to the Deputy Director of ESPO, where the Director of ESPO is not available

"Procuring Officer" means any Officer (e.g. Buyer, Senior Buyer, Group Buyer), acting under the delegated powers of a Chief Officer (Dir of ESPO), who is responsible for the procurement of goods and services

The identification of equivalent officers and delegations as regards LCC's Financial Procedure Rules are to be dealt with separately

Rule	Exception	Equivalent	Delegation
4 (a) (i)	(a) Subject to the requirements of EU Directives, EU Treaties, Acts of Parliament and UK Regulations the following contracts may be placed by direct negotiation with one or more suppliers, contracts:- (i) for supplies or materials which are available only as proprietary or patented articles from one contractor or supplier and for which the Appropriate Chief Officer , on the advice of the Category 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, 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 exceeds £100,000, a copy of the note and reasons must be provided to the Director of Corporate Resources	Appropriate Chief Officer = Dir of ESPO Category Manager = Appropriate Group Buyer	Dir of ESPO to ESPO Deputy/Asst Dir No delegation from Dir of CR
4 (b) (i)	(b) Other exceptions to these Rules may only be made within the relevant law and with the authority:- (i) of the Appropriate Chief Officer where the Estimated Value of the proposed contract is under £100,000. The Appropriate Chief Officer shall maintain a record specifying the reason for all such departures; or	Appropriate Chief Officer = Dir of ESPO	Dir of ESPO to ESPO Deputy/Asst Dir

Rule		Equivalent	Delegation
4 (b) (ii)	(ii) of the Executive where it is satisfied that an exception is justified on its merits. In an urgent case the Chief Executive in consultation with the Council Leader or Deputy Leader (save where this is not practicable) may direct that an exception be made subject to this being reported to the next meeting of the Executive .	Executive = ESPO Management Committee Council Leader or Deputy Leader = Chair or Deputy Chair of ESPO Management Committee	Chief Executive to Dir of ESPO
Financial Thresholds and Delegation			
5 (a)	(a) Financial limits and thresholds within these Rules may be varied from time to time by the Corporate Governance Committee		No delegation from Corp Gov Committee
5 (b)	(b) Arrangements for delegation of functions to officers within these Rules may be varied from time to time by the Chief Executive .		No delegation from Chief Executive
General Requirements			
8 (e)	(e) Based on criteria laid down by the Executive , the Director of Corporate Resources will be responsible for evaluating the financial status of Tenderers and suppliers.		Dir of CR to Dir of ESPO ...to ESPO Finance Officers
8 (h)	(h) Subject to the provisions of Rule 27(b) (Framework Agreements) contracts shall not be longer than 5 years (including extensions) or of indeterminate length without the written approval of the Director of Corporate Resources on advice of the appropriate Category Manager . Any such approval shall be sought prior to the commencement of the Procurement Exercise.	Category Manager = Appropriate Group Buyer	Dir of CR to Dir of ESPO
Procurement Exercise Process			
10	References in Table 1 to "Website approved by the Director of Corporate Resources" in the column headed 'Minimum Contract Opportunity Publication'		Dir of CR to Dir of ESPO ...to ESPO Deputy/Asst Dir
Contract Opportunity Publication			
13 (a)	(a) Unless otherwise agreed by the Director of Corporate Resources the Procuring Officer must ensure, for all Procurement Exercises with an Estimated Value of £20,000 or more but less than the relevant EU threshold, that public notice is given on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market.		Dir of CR to Dir of ESPO ...to ESPO Deputy/Asst Dir
13 (d)	(d) If the Estimated Value exceeds the relevant EU threshold the Procuring Officer must ensure that notice is first published in the OJEU and then on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market. Except for services classed as Part B services which need only be advertised on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market.		Dir of CR to Dir of ESPO ...to ESPO Deputy/Asst Dir
Negotiated Procedure and Competitive Dialogue Procedure			

Rule		Equivalent	Delegation
16 (b)	(b) The Negotiated Procedure or Competitive Dialogue Procedure must only be used with the prior approval of the Director of Corporate Resources .		No delegation from Dir of CR <u>Note:</u> A short briefing note for the Dir of CR approval, in consultation with Legal Services, is required, to justify the use of the NP or CD procedure. For example, in the case of the CD procedure this note would need to show how the proposed procurement satisfied the twofold test, that: (1) the use of the open or restricted procedure would not allow the award of contract, and (2) the procurement would be considered complex
Invitations to Tender			
17 (e)	(e) Tenders, where the Estimated Value is £100,000 or more, must be addressed to and opened by the Chief Executive or handled via an electronic tendering system approved in accordance with Rule 8(g).		Chief Executive to Dir of ESPO ...to ESPO Contracts Admin Officer
17 (f)	(f) Where Tenders are to be received by the Chief Executive , the Procuring Officer must send to the Chief Executive 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.		Chief Executive to Dir of ESPO ...to ESPO Contracts Admin Officer
Irregular Tenders			
18 (c)	(c) Tenders where the Estimated Value is £100,000 or more are not valid unless they are received in a plain sealed envelope or parcel addressed to the Chief Executive . The envelope or package must bear the word "Tender" followed by the subject to which it relates.		Chief Executive to Dir of ESPO ...to ESPO Contracts Admin Officer
18 (f)	(f) If in other cases of Irregular Tenders the Chief Executive considers that there are exceptional circumstances and that the Tenderer who submitted the Irregular Tender has gained no advantage from its irregularity he may determine to accept the Irregular Tender and authorise that it be opened and evaluated together with any other Tenders in accordance with Rule 19. The Chief Executive shall record in writing the reasons why each Irregular Tender has been accepted or rejected.		Chief Executive to Dir of ESPO ...to ESPO Deputy/Asst Dir (...to ESPO Contracts Admin Officer - for recording reasons for acceptance / rejection)
18 (g)	(g) Irregular Tenders that the Chief Executive has rejected under this Rule must be returned to the Tenderer by the Chief Executive with a covering letter stating the reason for their rejection.		Chief Executive to Dir of ESPO ...to ESPO Deputy/Asst Dir
Receipt and Opening of Tenders			
19 (b)	(b) On receipt, envelopes containing Tenders must be date and time stamped by the Chief Executive and shall remain in his custody until they are opened. The Chief Executive must keep a record of all Tenders received.		Chief Executive to Dir of ESPO ...to ESPO Contracts Admin Officer

Rule		Equivalent	Delegation
19 (c)	(c) 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 Chief Executive . Each Officer must initial each Tender once opened which must also be date stamped.		Chief Executive to Dir of ESPO ...to ESPO Contracts Admin Officer
19 (d)	(d) Particulars of all Tenders opened must be entered by the Chief Executive upon the record which must be signed by the Officers present at the opening, together with a note of all irregular Tenders.		Chief Executive to Dir of ESPO ...to ESPO Contracts Admin Officer
19 (e)	(e) The Chief Executive must forthwith send a copy of the record to the appropriate Procuring Officer (with the Tenders) and must retain a copy himself.		Chief Executive to Dir of ESPO ...to ESPO Contracts Admin Officer
Discussions and Post Tender Negotiation			
21 (b)	(b) As a minimum, when conducting Post Tender Negotiations, as part of a Procurement Exercise where the estimated value is £100,000 or more (but below the EU Threshold), the Tenderers submitting the most competitive Tender in accordance with the award methodology and evaluation criteria (Rule 12) and all those whose Tender is within 5% of the most competitive Tender or, if there is no such Tender, the Tenderer submitting the second most competitive Tender, will be invited to participate in Post Tender Negotiations unless the Procuring Officer in consultation with the County Solicitor decides not to do so		No delegation from County Solicitor
21 (c) (iv)	(iv) Post Tender Negotiation shall not enable any material departure from the published specification. The County Solicitor shall determine whether any proposed change to the specification constitutes a material departure and whether as a consequence other Tenderers shall be permitted to participate in Post Tender Negotiations and/or whether new Tenders should be invited, to avoid any potential allegations of competition being distorted.		No delegation from County Solicitor
Award of Contract			
22 (b) (i)	Any other Tender [where not accepted in accordance with the initial award methodology and evaluation criteria] may only be accepted with the prior written approval of: (i) the Director of Corporate Resources where the value of the Tender is less than the relevant EU Threshold or where the difference between the lowest Tender and that which it is proposed to accept is less than 1%.		No delegation from Dir of CR
22 (b) (ii)	Any other Tender [where not accepted in accordance with the initial award methodology and evaluation criteria] may only be accepted with the prior written approval of: the Executive in all other circumstances	Executive = ESPO Management Committee	
22 (c)	(c) If the Tender to be accepted exceeds the budget which was agreed in accordance with Rule 8(f) the Procuring Officer must ensure that sufficient funds are available and approved by the appropriate budget holder, Appropriate Chief Officer or Executive prior to accepting the Tender	Appropriate Chief Officer = Dir of ESPO Executive = ESPO Management Committee	Dir of ESPO to ESPO Deputy/Asst Dir
22 (e)	(e) The Appropriate Chief Officer shall have the authority to accept a Tender but in any particular circumstance may decline to give approval and refer the decision to the Executive .	Appropriate Chief Officer = Dir of ESPO Executive = ESPO Management Committee	

Rule		Equivalent	Delegation
24 (c)	<p style="text-align: center;">Form of Contract</p> <p>(c) All contracts with an Estimated Value of £20,000 or more must be in writing and where appropriate the Appropriate Chief Officer shall:</p> <p>(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.</p> <p>(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.</p> <p>(iii) ensure that the contract provides for the supplier to have an insurance policy, which can be inspected during the contract period. The Director of Corporate Resources shall be consulted on the insurance requirements.</p> <p>(iv) consult the Director of Corporate Resources on the appropriate VAT requirements.</p>	Appropriate Chief Officer = Dir of ESPO	<p>Dir of CR to Dir of ESPO, on the following basis...</p> <p><u>Insurance</u> - Insurance Levels (which may be amended for a specific procurement exercise, where appropriate, and agreed with the Insurance Manager):</p> <ul style="list-style-type: none"> >Employers Insurance = £10m (for each and every occurrence) >Public/Third Party Insurance (incl. Products Liability, if needed) = £10m (for each and every occurrence) >Professional Indemnity (where appropriate) = £2m <p>...When considering these levels, consideration must be given to:</p> <ul style="list-style-type: none"> >The level of risk >What is covered, incl. any exclusions, warranties etc >Level of excess/deductible >Financial standing of supplier >Duration of cover (Prof Indemnity usually written on a 'claim made' basis >Prof Indemnity usually written on an aggregate basis <p>...To vary the insurance levels for a particular procurement exercise approval must be gained from the Insurance Manager (David Marshall-Rowan)</p> <p><u>VAT</u> - Should any advice on VAT be required for a particular procurement exercise, contact Bev King (Technical Accountant - Taxation Co-ordinator)</p>

Rule		Equivalent	Delegation
24 (d)	(d) Every contract must be signed by the Appropriate Chief Officer or an Officer designated by him and in cases determined by the County Solicitor shall be under seal in the form prepared or approved by him or her.	Appropriate Chief Officer = Dir of ESPO	No delegation from County Solicitor Further work is to be undertaken to establish a scheme of delegation for ESPO for signing contracts, based on risk, that includes a review of the 1996 ESPO Standing Orders / Scheme of Delegation. This new scheme of delegation will set out which high risk contracts will need to be approved by the ESPO Management Committee. Also, the Head of Legal Services is to advise on: >guidance for cat mgrs in determining the contracts that should be sealed >the procedure for producing an annual return of contracts that are sealed
24 (e)	(e) Except after consultation with the County Solicitor , work or services must not be authorised to commence or goods to be supplied where such works, services or goods are to be the subject of a contract under seal entered into between the Council and the supplier, until the County Solicitor has advised that the contract has been signed by the supplier.		No delegation from County Solicitor
Standing Lists			
26 (d)	(d) At least four weeks before a list is first compiled, the Procuring Officer must publish on a website approved by the Director of Corporate Resources for the purpose of notifying the supply market a notice inviting applications by a specified date for inclusion in it.		Dir of CR to Dir of ESPO ...to ESPO Deputy/Asst Dir
Framework Agreements			
27 (b)	(b) Framework Agreements must not be awarded for more than 4 years, including any extensions without the prior written consent of the Director of Corporate Resources .		Dir of CR to Dir of ESPO ...to ESPO Deputy/Asst Dir
Dynamic Purchasing System			
28	Procuring Officers must only establish Dynamic Purchasing Systems with the prior written approval of the Director of Corporate Resources and in accordance with the requirements of the EU Directives and these Rules where appropriate.		Dir of CR to Dir of ESPO ...to ESPO Deputy/Asst Dir
Contract Variations			
29 (b)	(b) In the case of a contract with a Total Value of £100,000 or more, for any extra(s) or variation(s) worth 10% or more of the Total Contract Value, the Appropriate Chief Officer must gain the prior approval of the Director of Corporate Resources . This authorisation must be issued before the work is carried out, or in the case of an emergency, immediately thereafter.	Appropriate Chief Officer = Dir of ESPO	No delegation from Dir of CR

Rule		Equivalent	Delegation
29 (c)	(c) In the case of a contract which was originally approved by the Executive and where any extras or variations are considered significant then the Executive must be informed as soon as practicable.	Executive = ESPO Management Committee	
Contract Extensions			
30 (a)	(a) If the contract was originally approved by the Executive and where the duration of the planned extension is more than three months then authority must be gained from the Executive .	Executive = ESPO Management Committee	
30 (b)	(b) If the Total Value of a contract, including the planned extension, is under £100,000 and the contract provides for the extension the Appropriate Chief Officer shall be authorised to extend the contract.	Appropriate Chief Officer = Dir of ESPO	Dir of ESPO to ESPO Deputy/Asst Dir
30 (c)	(c) If the Total Value of a contract, including the planned extension, is £100,000 or more and the contract provides for the extension the Appropriate Chief Officer shall be authorised to extend the contract in consultation with the Category Manager .	Appropriate Chief Officer = Dir of ESPO Category Manager = Appropriate Group Buyer	Dir of ESPO to ESPO Deputy/Asst Dir
30 (d)	(d) If the Total Value of a contract, including the planned extension, is under £100,000 and the contract does not provide for the extension the Appropriate Chief Officer shall be authorised to extend the contract on a one-off basis, provided that the extension does not exceed 6 months or a Total Value of £25,000, whichever is the greater.	Appropriate Chief Officer = Dir of ESPO	Dir of ESPO to ESPO Deputy/Asst Dir
30 (e)	(e) If the Total Value of a contract, including the planned extension, is £100,000 or more and the contract does not provide for the extension the Appropriate Chief Officer must gain the prior approval of the Director of Corporate Resources to extend the contract.	Appropriate Chief Officer = Dir of ESPO	Dir of CR to Dir of ESPO
Novation of Existing Contract			
31	The novation of a contract to a new Person requires the prior written approval of the Director of Corporate Resources .		Dir of CR to Dir of ESPO
Early Terminations of Contract			
32	Unless a provision for early termination is clearly stated in the contract and takes effect, Procuring Officers shall seek advice from the County Solicitor where it is intended to terminate a contract early. In all such circumstances where the Total Value of the contract is £100,000 or more the prior written approval of the Director of Corporate Resources shall be obtained.		Dir of CR to Dir of ESPO No delegation from County Solicitor