

APPENDIX A - PROPOSED AMENDMENTS TO THE CONTRACT PROCEDURE RULES

All references in the table below are to the current rule numbers prior to the proposed amendments being made.

RULE	PROPOSED AMENDMENT	EXPLANATION
Insert as new rule before Rule 2	Add the following Rule: Appropriate Chief Officers may delegate their responsibilities under these Rules in accordance with Rule 6 of Section D (General scheme of delegation to heads of departments) of Part 3 (Responsibility for Functions) of the Constitution.	It is felt important to reiterate this rule from Part 3 (Responsibility for Functions) of the Constitution, providing for delegations by Appropriate Chief Officers, within the Contract Procedure Rules, given the push within the Council to create a less risk averse culture where opportunities for finding innovative solutions are opened up across the organisation.
4 (a) (iv)	Amend as highlighted: (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:- (iv) for residential placements sought for an individual with a registered care provider of their choice and for supported living services sought for an individual with an appropriate care and support provider of their choice under the National Health Service and Community Care Act 1990, or for individual school placements sought for a child with Special Educational Needs (SEN), or where the particular needs of an individual (either an adult or a child) require a particular social care package, which is only available from a particular provider in the opinion of the Appropriate Chief Officer. In each case the Appropriate Chief Officer must ensure that the provider meets the relevant national minimum standards (for example those standards set by the Health and Social Care Act 2008, OFSTED and HMI) and that a record of the reasons for the choice of provider is maintained on the individual's case notes. A record of the annual cumulative expenditure with each provider will be maintained by each directorate and made available for audit.	Added to reflect the need to cater for personal choice in additional circumstances.
6	Amend as highlighted: The Director of Corporate Resources in consultation with the County Solicitor shall at least once in each financial year submit a report to the Corporate Governance Committee in relation to the operation of these Rules including among other things any departures from or details of the approved exceptions to these Rules	What was meant by "departures" from the Rules is now explicitly stated.

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	<p>and approved extensions to contract where not provided for in the contract, and proposed revisions to these Rules and/or changes required to accommodate the requirements of UK and EU procurement law as may be necessary from time to time.</p>	
<p>Insert as new rule before 8 (b)</p>	<p>Add the following Rule: When proposing to procure or making arrangements for procuring a service contract where the Estimated Value exceeds the EU Threshold then consideration must be given as to how the Contract might improve the economic, social and environmental wellbeing of Leicestershire, as required by the Public Services (Social Value) Act 2012*. This duty also relates to Part B Services where the Estimated Value exceeds the EU Threshold for Services.</p> <p>* This duty is not in force as at [date]</p>	<p>Reflects the duty created by the Public Services (Social Value) Act 2012 for public procurers to consider the social value that might be gained when undertaking procurement exercises to award service contracts. Procurement guidance and training will also be enhanced to reflect this duty.</p> <p>It is proposed that the footnote be included within the Rules given that the duty is yet to come into force; then removed when the duty does come into force.</p>
<p>Merge existing 8 (b) and 8 (c) to read as shown (deleting the current 8 (c))</p>	<p>Amend as highlighted: (b) The Procuring Officer must ensure that whenever Corporate Contracts have been approved by a Category Manager that supplies, services and works are ordered via these, <u>unless it is agreed by the Category Manager that better value for money can be clearly demonstrated outside of these approved Corporate Contracts. All such instances involving ESPO must be notified to ESPO by the Category Manager.</u></p>	<p>Resolves the current contradiction between Rule 8 (b) which mandates the use of Corporate Contracts, and Rule (c) which then makes provision for not using Corporate Contracts.</p>
<p>19 (a)</p>	<p>Amend as highlighted: Rule 19 applies to Tenders where the Estimated Value is £100,000 or more, <u>except where using an electronic tendering system that does not allow Tenders to be accessed until the deadline for Tender submissions has passed, and where Rule 8 (g) has been followed.</u></p>	<p>Account is taken of the electronic tendering systems that may be used and which do not allow tenders to be accessed until the deadline date for tender submissions has passed.</p>
<p>24 (a) (i)</p>	<p>Amend as highlighted: (a) A contract shall be formed: (i) by exchange of letter <u>or electronic communication</u> accepting the successful Tender and incorporating the Invitation to Tender or Request for Quotation and the outcome of any subsequent negotiations and discussions; or</p>	<p>Explicitly allows for electronic communication as a means of forming a contract.</p>
<p>27 (d)</p>	<p>Amend as highlighted: An open Framework Agreement which allows for a New suppliers <u>may only to be added to the a Framework Agreement throughout its duration may be used in</u></p>	<p>The term "open Framework Agreement" currently used in the Rules is not used in the Public Contract Regulations or in the EU Consolidated Directive on Public Procurement and</p>

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	<p><u>circumstances</u> where:</p> <p>(i) the Estimated Value is below the EU Threshold; or</p> <p>(ii) for the services tendered are Part B Services <u>where to which</u> the full regime of the Public Contracts Regulations 2006 is not considered <u>applicable to apply; and</u></p> <p><u>provided that the Invitation to Tender states:</u></p> <p>(i) <u>that new suppliers may be added to the Framework Agreement;</u></p> <p>and</p> <p>(ii) <u>how many suppliers can apply to be added to the Framework Agreement; and</u></p> <p>(iii) <u>that the same In this case consistent</u> evaluation criteria and award methodology <u>must be set out in the Invitation to Tender, and then employed when awarding Persons a place on the Framework Agreement are applied when deciding whether to award a place on the Framework Agreement to new suppliers as was applied at the time of the original award.</u></p>	<p>so is not defined anywhere. Therefore, it is proposed that the term is deleted to avoid confusion and greater detail is provided as to when and how more open framework agreements (than described in Regulation 19 of the Public Contract Regulations) may be used.</p>
32	<p>Amend as highlighted:</p> <p>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. Where the Total Value of the contract is £100,000 or more the prior written approval of the Director of Corporate Resources shall <u>also</u> be obtained.</p>	<p>The words “and takes effect” are deleted as they imply that early termination requires a specific set of circumstances such as a material breach by the contractor, whereas the contract may also allow for early termination out of convenience.</p> <p>The word “also” is added to make it clear that where it is intended to terminate a contract with a total value of £100,000 or more early, it is necessary to seek advice from the County Solicitor as well as gain prior written approval from the Director of Corporate Resources.</p>
Schedule 1 Interpretation	<p>Add the following definition:</p> <p>“Public Contracts Regulations 2006” means the Public Contracts Regulations 2006 as amended, modified, consolidated, extended, re-enacted or replaced, including the Public Contracts (Amendment) Regulations 2009. These Regulations implement the EU Consolidated Directive on Public Procurement into UK law and reflect the principles of the EU Treaty of Rome.</p>	<p>Defines a term used throughout the Rules.</p> <p>It is also necessary to ensure that the term/legislation is correctly spelt throughout the Rules and that the links to the legislation are made live (where underlined).</p>