

**CONTRACT PROCEDURE
RULES**

**Eastern Shires Purchasing Organisation
(ESPO)**

Contract Procedure Rules

(DRAFT)

2014-15

ESPO Contract Procedure Rules

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

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

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

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

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

GENERAL

RULE 1

Compliance

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

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

RULE 2

Interpretation

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

RULE 3

Application

These Rules apply to every procurement Contract made by or on behalf of ESPO, and every procurement Contract made on behalf of a group of ESPO members and/or non-members except Contracts:

- (i) for only the acquisition or disposal of any interest in land;
- (ii) for the lending or borrowing of money;
- (iii) of employment (making an individual a direct employee of ESPO).

PROCUREMENT PRINCIPLES

RULE 4

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 exceeds 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. This duty also relates to Part B Services where the Estimated Value exceeds the EU Threshold for Services.
- (c) Procedures set out in the relevant EU Directives, EU Treaties, Acts of Parliament and UK legislation must be complied with at all times.
- (d) 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.
- (e) 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.
- (f) Procurement Exercises may be undertaken by electronic means provided that:
 - (i) the requirements of these Rules are followed with only such modifications as may be necessary to allow for procurement by such means; and
 - (ii) any electronic tendering system has been approved by the Director of ESPO.
- (g) 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 ESPO on advice of the appropriate Head of Category. Any such approval shall be sought prior to the commencement of the Procurement Exercise.

RULE 5

Exceptions

- (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, materials, services or works which are available only as proprietary or patented articles, services or works from one contractor or

supplier and for which the Director of ESPO, on the advice of the appropriate Head of Category, 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 exceeds £100,000, a copy of the note and reasons must be provided to the Director of Corporate Resources.

- (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 29 (Contract Variations), Rule 30 (Contract Extensions) and Rule 31 (Novation of Existing Contracts);

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

- (b) Other exceptions to these Rules may only be made within the relevant law and with the authority:-
 - (i) of the Director of ESPO where the Estimated Value of the proposed Contract is under £100,000. The Director of ESPO shall maintain a record specifying the reason for all such departures; or
 - (ii) of the ESPO Management Committee where it is satisfied that an exception is justified on its merits. In an urgent case the Director of ESPO in consultation with the Chairman or Deputy Chairman of the ESPO Management Committee (save where this is not practicable) may direct that an exception be made subject to this being reported to the next meeting of the ESPO Management Committee.

RULE 6

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 7

Annual Reporting

The Director of ESPO in consultation with the County Solicitor shall at least once in each financial year submit a report to the ESPO Management Committee in relation to the operation of these Rules including among other things details of the approved exceptions to these Rules and approved extensions to contract where not provided for in the contract, and proposed revisions to these Rules and/or changes required to accommodate the requirements of UK and EU procurement law as may be necessary from time to time.

RULE 8***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 24(c):

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

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

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

PROCUREMENT EXERCISE

RULE 9

Pre-Estimate

- (a) Before any Procurement Exercise is begun the Procuring Officer must calculate its Estimated Value in accordance with this clause.
- (b) The Estimated Value shall be calculated as follows:
- (i) Where the Contract period is fixed the Estimated Value shall be the total estimated maximum value of the supplies, services or works to be supplied over the period covered including any extensions to the Contract;
 - (ii) Where the Contract period is indeterminate the Estimated Value shall be calculated by multiplying the estimated average monthly value by 48;
 - (iii) For feasibility studies the Estimated Value shall be the value of the scheme or Contracts which may be awarded as a result;
 - (iv) For Concessions the Estimated Value shall be the estimated gross value of the service before income over the Contract period.
 - (v) The Estimated Value must exclude Value Added Tax (VAT) but must include all other taxes and duties.
 - (vi) Periodic purchases for the same requirement, whether that is from the same or different suppliers, must be aggregated over a minimum of a 12 month period.
 - (vii) Where ESPO / ESPO Clients contribute to the total value of a Contract, it is the total Estimated Value that should be applied in determining the correct procedures to be applied under these Rules.
- (c) Where there is any doubt as to the Estimated Value then the procedure for the higher threshold in Rule 10 must be used.

RULE 10

Procurement Exercise Process

- (a) Based on the Estimated Value, as identified in Rule 9, 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 5)

Estimated Contract Value		Procurement Process	Minimum Contract Opportunity Publication	Documentation
From (£)	Up to (£)			
£0	£1,000	Obtain a minimum of one oral/written Quotation	None	Record details

Estimated Contract Value		Procurement Process	Minimum Contract Opportunity Publication	Documentation
From (£)	Up to (£)			
£1,000	£20,000	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. ¹	Record details. (If three Quotations cannot be obtained a record of the reasons for this must be maintained and forwarded to the appropriate Head of Category).
£20,000	£100,000	Seek written Quotations (to be based on a Request for Quotation document where practical)	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.
£100,000	EU Threshold	Formal Tender Process	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 4(f))
EU Threshold	Above	Formal Tender Process	OJEU 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 4(f))

(b) Details of oral Quotations must be recorded appropriately.

RULE 11

Selection and Award Evaluation Criteria

- (a) A Procurement Exercise must include both selection and award criteria;
- (b) Selection criteria must be included in the evaluation process where employing the Open Tendering procedure (Rule 14) or must be the only criteria used for the shortlisting methodology where employing the Restricted procedure (Rule 15).

RULE 12

Award Methodology and Evaluation Criteria

- (a) The award methodology must be either:
- the most economically advantageous Tender based on a range of predetermined evaluation criteria which must be set out in the Invitation to Tender; or

¹ ESPO cannot give preference to local suppliers, as there are legislative constraints and such a policy would be incompatible with Best Value. However, ESPO recognises that there can be barriers limiting or restricting the ability of smaller suppliers to compete for ESPO business. ESPO will seek to reduce the impact of such barriers, where it can do so legally, without discrimination, and without placing unacceptable levels of risk on ESPO.

- the lowest price (where ESPO/ESPO Client is to pay the supplier); or
 - the highest price (where the supplier is to pay ESPO/ESPO Client).
- (b) Before a Contract can be awarded the supplier must meet the minimum standard for the selection criteria where included in the evaluation process where employing the Open Tendering procedure (Rule 14) or where the only criteria used for the shortlisting methodology where employing the Restricted procedure (Rule 15).
- (c) In the case of a Procurement Exercise with an Estimated Value of £20,000 or more the process for identifying the most economically advantageous Tender, including selection and award criteria, must be agreed in consultation with the appropriate Head of Category/ESPO Client and included in the RFQ/Invitation to Tender and a copy retained on file.
- (d) The Procuring Officer must notify all Tenderers of the award methodology and evaluation criteria being used in the case of the Contract in question. If weightings are to be applied to the criteria then the Procuring Officer must ensure that these are also incorporated into the Invitation to Tender.

RULE 13

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 £20,000 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) For all proposed contracts where the Total Value is below the EU threshold, a period of at least fifteen days should be allowed between the closing date for requests for the Invitation to Tender and either:
- i) the deadline for receipt of Tenders, where an Open Tendering procedure is being used, or
 - ii) the deadline for receipt of Pre-Qualification Questionnaires or Expressions of Interest, where a Restricted Tendering procedure is being used.
- (c) The Contract Opportunity Publication must express the nature and purpose of the Procurement Exercise, stating where further details may be obtained and inviting Tenders or Quotations in response to the Contract Opportunity Publication.
- (d) 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. Part B Services need only be advertised on a website approved by the Director of ESPO for the purpose of notifying the supply market.
- (e) Under no circumstances must a Contract Opportunity Publication appear in any form before publication in the OJEU and neither should any advertisement contain any more information than that published in the OJEU.
- (f) Rule 13 is a minimum requirement and does not preclude further Contract Opportunity Publication where appropriate (e.g. in the local newspaper, trade or professional journal, the ESPO website).

PROCUREMENT PROCESS

RULE 14

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 15

Restricted Tendering

- (a) Rule 15 applies to Tenders where the Estimated Value is equal to or exceeds the EU Threshold.
- (b) 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(b); 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(b).
- (c) The shortlisting criteria and process must be prepared (in consultation with the ESPO Client) in advance of the issue of the Pre-Qualification Questionnaire and a copy retained on record.
- (d) 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 16

Negotiated Procedure and Competitive Dialogue Procedure

- (a) Where the Negotiated Procedure or Competitive Dialogue Procedure is used the requirements of the EU Directive and where appropriate these Rules shall be followed.
- (b) The Negotiated Procedure or Competitive Dialogue Procedure must only be used with the prior approval of the Director of Corporate Resources.

[Note: A short briefing note for the approval of the Director of Corporate Resources, in consultation with the County Solicitor, is required to justify the use of the Negotiated Procedure or Competitive Dialogue Procedure. For example, in the case of the Competitive Dialogue Procedure, this note would need to show how the proposed procurement satisfied the twofold test, that:

(i) the use of the open or restricted procedure would not allow the award of Contract; and

(ii) the procurement would be considered complex.]

RULE 17

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, for Tenders where the Estimated Value is £100,000 or more, must state the effect of Rule 18.
- (b) The Procuring Officer 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) The Procuring Officer 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) Tenders, where the Estimated Value is £100,000 or more, must be addressed to and opened by the Director of ESPO or handled via an electronic tendering system approved in accordance with Rule 4 (f).
- (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 18

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 delivered to the place appointed in accordance with Rule 17 and not later than the appointed day and hour.
- (c) Tenders other than E-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 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 process 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 18(b) or 18(c), the provisions of Rules 18(f) and 18(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 19 if there is clear evidence of it having:-

- (i) been posted by first class post at least a day before the closing date; OR
 - (ii) been posted by second class post at least three days before the closing date; OR
 - (iii) been placed in the custody of a courier who has provided written assurance of delivery prior to the closing date and time.
- (g) If in other cases of Irregular Tenders the Director of ESPO, in consultation with the County Solicitor, considers that there are exceptional circumstances and that the Tenderer who submitted the Irregular Tender has gained no advantage from its irregularity he or she may determine to accept the Irregular Tender and authorise that it be opened and evaluated together with any other Tenders in accordance with Rule 19. The Director of ESPO shall record in writing the reasons why each Irregular Tender has been accepted or rejected.
- (h) Irregular Tenders that the Director of ESPO has rejected under this Rule must be returned to the Tenderer by the Director of ESPO with a covering letter stating the reason for their rejection.

RULE 19

Receipt and Opening of Tenders

- (a) Rule 19 (b) to (f) apply only to Tenders where the Estimated Value is £100,000 or more and the Tender is not an E-Tender. Rule 19 (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 process used.

RULE 20

Errors or Discrepancies in Tenders

- a) Tenderers are not allowed to alter their Tenders after opening save in accordance with this Rule or Rule 21.

- (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 seek clarification from Tenderers.
- (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 21

Discussions and Post Tender Negotiations

- (a) Subject to Rule 21(c), in the case where the Estimated Value was below the EU Threshold, and following the closing date for receipt of Tenders but before acceptance of any Tender, the Procuring Officer in consultation with the appropriate Head of Category may carry out Post Tender Negotiations 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, as part of a Procurement Exercise where the Estimated Value is £100,000 or more (but below the EU Threshold) and subject to Rule 21(c), only the Tenderer submitting the most competitive Tender in accordance with the award methodology and evaluation criteria (Rule 12) may be invited to participate in Post Tender Negotiations.
- (c) When conducting Post Tender Negotiations, the following additional rules shall apply:
 - (i) At no time during the negotiations must a Tenderer be informed of the detail of any other Tender submitted or as to whether or not the Tender he submitted was the lowest.
 - (ii) During negotiations in person there must always be present at least two Officers or ESPO Client officers.
 - (iii) A note of the negotiations will be made by one of the officers referred to in the proceeding rule present recording those present, the time and location of the negotiations, detail of the discussion and any agreement reached.
 - (iv) Post Tender Negotiations shall not enable any material departure from the published specification. The County Solicitor shall determine whether any proposed change to the specification constitutes a material departure 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.

- (d) 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 20.

AWARD OF CONTRACT

RULE 22

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 12. Any evaluation sheets must be maintained on file in accordance with Rule 33.
- (b) Any Tender with an Estimated Value of below £20,000 (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 4(e) 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) An abnormally low Tender may not be rejected without first giving the Tenderer the opportunity to explain the tendered price.
- (e) The Director of ESPO shall have the authority to accept a Tender but in any particular circumstance may decline to give approval and refer the decision to the ESPO Management Committee to determine.

RULE 23

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 £1,000 or more this notification must be in writing.
- (b) In the case where the Estimated Value is £20,000 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) In the case where the Estimated Value is equal to or above the appropriate EU Threshold, the following additional Rules shall apply:
 - (i) The notice in rule 23 (b) shall include the award criteria, the reasons for the decision, including the successful Person's score, the score (if any) of the Person receiving the notice, and the characteristics and (if appropriate) relative advantages of the successful Person's Tender, any reasons why the recipient of the notice did not meet the technical specification, the name of the Person awarded the Contract, as well as the date when the standstill period required in accordance with Rule 23 (c) (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 23 (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 48 days of the Contract award.

RULE 24

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 25.
- (b) In determining and negotiating the terms and conditions of Contract, the Procuring Officer must ensure that the appropriate Standard Terms and Conditions are incorporated unless the Procuring Officer having consulted the Director of ESPO and the County Solicitor considers it inappropriate to do so.
- (c) All Contracts with an Estimated Value of £20,000 or more must be in writing and where appropriate the Director of ESPO shall:
 - (i) ensure that the Contract includes a definition of the circumstances that will be considered to constitute a default on the terms of the Contract by the supplier. The Contract must provide for notice of default to be given to the supplier and for any resulting losses to be recovered from the supplier if the default is not rectified.
 - (ii) decide whether it is necessary to require suppliers to provide a Performance Bond with a third party. The need for this will depend on an assessment of the risk associated with the Contract or the supplier.
 - (iii) ensure that the Contract provides for the supplier to have an insurance policy, which can be inspected during the Contract period. The Director of ESPO shall be consulted on the insurance requirements.

[Note: Insurance Levels (which may be amended for a specific Procurement Exercise, where appropriate, and agreed by the Procuring Officer with the Servicing Authority's Insurance Manager):

- *Employers Insurance = £10m (for each and every occurrence)*

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

To vary the insurance levels for a particular Procurement Exercise approval must be gained from the Servicing Authority's Insurance Manager, or the ESPO Client Insurance Manager as appropriate.]

- (iv) consult the Director of ESPO on the appropriate VAT requirements.

[Note: Should any advice on VAT be required for a particular Procurement Exercise, contact the Servicing Authority's Technical Accountant - Taxation Co-ordinator]

- (d) Every Contract must be signed by the Director of ESPO or an Officer designated by him or her and in cases determined by the County Solicitor shall be under seal in the form prepared or approved by him or her.
- (e) Except after consultation with the County Solicitor, work or services must not be authorised to commence or goods to be supplied where such works, services or goods are to be the subject of a Contract under seal until the County Solicitor has advised that the Contract has been signed by the supplier.

RULE 25

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 26

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 Head of Category.
- (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 26(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 Head of Category advises otherwise.
- (g) The Procuring Officer in consultation with the appropriate Head of Category 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 27

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.
- (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 Part B Services to which the full regime of the Public Contracts Regulations 2006 is not considered to apply; and
 provided that the Invitation to tender states:
 - (i) that new suppliers may be added to the Framework Agreement;
 and
 - (ii) how many suppliers can apply to be added to the Framework Agreement; and

that the same evaluation criteria and award methodology are applied when deciding whether to award a place on the Framework Agreement to new suppliers as were applied at the time of the original award.

RULE 28***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 EU Directives and these Rules where appropriate.

CONTRACT AMENDMENTS**RULE 29*****Contract Variations***

In the case of a Contract which was originally approved by the ESPO Management Committee and where any variations are considered significant by the Director of ESPO or the County Solicitor in consultation with the appropriate Head of Category, then Authority must be gained from the ESPO Management Committee. In all other circumstances the following applies:

- (a) Prior to any variation 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, or ESPO Client.
 - (b) If the Total Value of the Contract is under £100,000 including the planned variation, the Director of ESPO, in consultation with the appropriate Head of Category and **the County Solicitor**, shall be authorised to vary the Contract. This authorisation must be issued before the work is carried out, or in the case of an emergency, immediately thereafter.
- (a) In the case of a Contract with a Total Value of £100,000 or more:
- i) for any variation(s) that would increase or decrease the Total Value of the Contract by 10% or more, the Director of ESPO shall before making any variation(s) consult with the Head of Category and the County Solicitor and must gain the prior approval of the ESPO Client (where the variation relates to an ESPO Client contract). This approval must be issued before the work is carried out, or in the case of an emergency immediately thereafter.
 - ii) for any variation(s) that would increase or decrease the Total Value of the contract by less than 10% the Director of ESPO in consultation with the appropriate Head of Category shall be authorised to vary the Contract. This authorisation must be issued before the work is carried out, or in the case of an emergency, immediately thereafter.
- (b) All contract variations must be within the scope of the original contract.

RULE 30***Contract Extensions***

If the Contract was originally approved by the ESPO Management Committee and where the duration of the planned extension is more than three months and not provided for in the Contract then authority must be gained from the ESPO Management Committee. In all other circumstances the following applies:

- (i) If the Total Value of a Contract, including the planned extension, is under £100,000 and the Contract provides for the extension the Director of ESPO shall be authorised to extend the Contract.
- (ii) If the Total Value of a Contract, including the planned extension, is £100,000 or more and the Contract provides for the extension the Director of ESPO shall be authorised to extend the Contract in consultation with the appropriate Head of Category.
- (iii) 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 Director of ESPO, in consultation with the Procuring Officer and appropriate Head of Category shall be authorised to extend the Contract on a one-off basis.
- (iv) 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 Director of ESPO must gain the prior approval of the Director of Corporate Resources to extend the Contract.
- (v) In the case of Contracts tendered in accordance with the EU Directive any extension will only be permissible if this was properly described in the original OJEU notice, where applicable.

RULE 31

Novation of Existing Contracts

The novation of a Contract to a new Person requires the prior written approval of the Director of ESPO in consultation with the County Solicitor.

RULE 32

Early Termination of Contracts

Unless a provision for early termination is clearly stated in the Contract the Procuring Officer shall seek advice from the County Solicitor where it is intended to terminate a Contract early. Where the Total Value of the Contract is £100,000 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 17 must require an undertaking by the Tenderer that, if selected, they will be willing to enter into a Contract with the main contractor on terms which indemnify the main contractor against their own obligations under the main Contract in relation to the work, supplies or services included in the sub-contract.

SCHEDULE 1***Interpretation***

1. "Best Value" means the duty of ESPO to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
2. The "Chief Executive" is the Chief Executive Officer of the Servicing Authority, Leicestershire County Council
3. "Concessions" are contracts of the same type as public service contracts, except for the fact that the consideration for the provision of services or works consists either solely in the right to exploit the service or work, or in this right together with payment.
4. "Contract" means a binding agreement between two or more parties for performing, or refraining from performing, some specified act(s) in exchange for lawful consideration.
5. "Contract Extension" means an extension to the duration of the Contract, but not including any alteration to the scope of the Contract.
6. "Contract Opportunity Publication" is the means by which a Procurement Exercise is advertised and includes (where appropriate) the 'Contract Notice' as defined in the Public Contract Regulations 2006.
7. "Contract Variation" means an alteration to the scope of the Contract, but not the extension of the duration of the Contract.
8. The "County Solicitor" is the County Solicitor of the Servicing Authority, Leicestershire County Council.
9. The "Director of Corporate Resources" is the Director of Corporate Resources of the Servicing Authority, Leicestershire County Council, and acts as the ESPO Treasurer.
10. "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 2006.
11. 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.
12. "ESPO Client" means a group of ESPO member authorities and/or non-member local authorities and/or other customers, including commercial organisations, charities and voluntary sector organisations, for which ESPO is managing a procurement process.
13. "Estimated Value" means the value as estimated under Rule 9.
14. "EU Threshold" means the respective threshold for Supplies, Works or Part A Services Contracts referred to in the Public Contract Regulations 2006.
15. "Formal Tender Process" is a process following the requirements of Open Tendering, Restricted Tendering, Standing List, Negotiated Procedure or Competitive Dialogue

16. "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 directives apply.
17. 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.
18. The "Head of Category" is the most senior Procurement Officer within an ESPO Category Team, and is responsible for managing the section
19. "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.
20. "Irregular Tender" means a Tender that does not fully comply with the instructions given in the Invitation to Tender.
21. "Officer" means an employee of ESPO.
22. "OJEU" means Official Journal of the European Union.
23. "Part A Services" are defined in [The Public Contract Regulations 2006](#), and are distinct from the other type of services, Part B Services, defined in the Regulations. The Regulations that apply to the two types of service are different, with the procurement of Part A Services being more heavily regulated than for Part B Services.
24. "Part B Services" are defined in [The Public Contract Regulations 2006](#), and are distinct from the other type of services, Part A Services, defined in the Regulations. The Regulations that apply to the two types of service are different, with the procurement of Part A Services being more heavily regulated than for Part B Services.
25. "Person" includes a partnership, body corporate or unincorporated association.
26. "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.
27. "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.
28. "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.
29. "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.

30. A "Quotation" is an offer to sell works, goods and/or services at a stated price under specified conditions. A Quote or Quotation may or may not be written.
31. "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.
32. "Standard Terms and Conditions" means the standard contractual terms used by ESPO, including those attached to iprocurement orders (or orders generated by 'line of business' systems, those included in Request for Quotation templates, and standard industry terms.
33. "Standing List" means a list of Persons which has been established in accordance with Rule 26.
34. "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.
35. "Tenderer" or "Tenderers" means the Person or Persons invited to participate in a Procurement Exercise.
36. "Total Value" means the value of a Contract which has been calculated in accordance with Rule 9(b) (excluding Rule 9(b)(vi)) reading where appropriate Total Value for Estimated Value.
37. "In writing" or "written" for the purpose of interpreting these Rules includes transmission by any electronic means which have been approved by the County Solicitor in consultation with the Director of Corporate Resources.
38. Words imparting the masculine include the feminine gender.

[end of Contract Procedure Rules]