



# Procurement and Contract Procedures

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*This Procedure outlines the requirements of the Company in relation to all procurement and contract activities and will apply to all contracts (excluding those stated in Rule 2.2), including those made in the course of the discharge of functions which are the responsibility of the Board.*

*Please note that any reference within this Procure to the Public Contract Regulations 2015 and any requirement arising from them remain in force in accordance with the Withdrawal Agreement 2019 until replaced by future legislation.*

## 1. INTRODUCTION

1.1. These terms will have the following meanings in the Procurement and Contract Procedures:-

<b>Above Threshold Process</b>	means the procurement process to be followed where the estimated whole life value of a Contract exceeds the relevant WTO GPA Threshold
<b>Above Threshold Tender</b>	means the procurement process to be followed where the estimated whole life value of a Contract exceeds the relevant WTO GPA Threshold
<b>Buying Manager</b>	means the Manager within the Company with responsibility for the Buying team
<b>Best Value Form</b>	means the form to be completed to capture the rationale for not seeking bids in accordance with <b>Rule 7</b>
<b>Board</b>	means the Company board of Directors
<b>Commercial Manager</b>	the executive with responsibility for client and supply chain relationships and opportunities for business growth
<b>Company</b>	means NY Highways Limited
<b>Concession</b>	means as defined in Regulation 3(4) of the Concession Contracts Regulations 2016
<b>Contract</b>	means any agreement made between the Company and any other person which is intended to be legally enforceable and involves the acceptance of an offer made by one party to commit itself to an action or series of actions and subject to the exceptions in <b>Rule 2.2</b>
<b>Contracts Finder</b>	means the web-based portal as described in Chapters 7 & 8 of the Public Contracts Regulations 2015
<b>Contract Register</b>	means the register of Contracts maintained by the Company as set out in <b>Rule 15.5</b>

<b>Contractor</b>	means a person or entity with whom the Company has a Contract
<b>Directors</b>	means Directors of the company and includes any person occupying the position of Managing Director.
<b>Senior Management Recommendation</b>	means a written record of the decision and justification to apply one of the exceptions set out in <b>Rule 14.2</b> to be signed by the Managing Director, Commercial Manager or Operations Manager and kept by the Managing Director (or an Employee designated)
<b>Electronic Signatures</b>	means an advanced electronic signature which is: <ul style="list-style-type: none"> <li>(i) uniquely linked to the signatory; and</li> <li>(ii) capable of identifying the signatory; and</li> <li>(iii) created using means that the signatory can maintain under his/her sole control; and</li> <li>(iv) linked to the data to which it relates in such a manner that any subsequent change of the data is detectable</li> </ul>
<b>Employee</b>	means a Company employee or other authorised agent
<b>E-Sourcing system</b>	means the Company’s chosen E-sourcing system or an approved alternative
<b>FPP</b>	means the Forward Procurement Plan which outlines all future procurement requirements of the Company
<b>Framework Agreement</b>	means an agreement with one or more contracting authorities and one or more economic operator which establishes an arrangement for: <ul style="list-style-type: none"> <li>(i) multiple orders to be placed with one Contractor (a single supplier framework), or</li> <li>(ii) a framework of multiple Contractors to engage in further competitions or direct award (a multiple supplier framework)</li> </ul>
<b>Governance Process</b>	means the Company’s value based procurement process that combines assessment and understanding of various aspects of value with appropriate review and scrutiny at defined points in the procurement cycle
<b>Internal Audit</b>	means the Company’s appointed internal auditors (currently Veritau)
<b>ITB</b>	means an Invitation to Bid

<b>ITQ</b>	means an Invitation to Quote
<b>ITT</b>	means an Invitation to Tender
<b>Leasing Agreement</b>	means a contract for the provision of finance to enable goods or services to be obtained and where ownership in those goods does not automatically pass to the Company at the end of the Contract period
<b>MEAT</b>	means the Most Economically Advantageous Tender
<b>Managing Director</b>	the executive in overall charge of the day to day running of the Company and is responsible for the management of the Company's business, for which purpose they may exercise all the powers of the company.
<b>Head of Operations</b>	the executive with responsibility for day-to-day activities in their planning and execution
<b>Participant</b>	means a person or entity participating in a procurement process, who has expressed an interest in tendering for a Contract or who has tendered for a Contract
<b>PCR</b>	means the Public Contracts Regulations 2015
<b>Person</b>	means any individual, partnership, company, trust, other local authority, Government department or agency
<b>Procurement Handbook</b>	means the manual to accompany these Rules which provides detailed guidance on procurement techniques and the effect of the Rules
<b>Property Contract</b>	means a Contract which creates an estate or interest in land or buildings
<b>Purchase Order</b>	the formal document issued by the Company to its supply chain detailing the requirements for the delivery of goods, works or services
<b>Rules</b>	means these Procurement and Contract Procedures
<b>Scheme of Delegation</b>	means a record of all duties and responsibilities as delegated under these Rules which is to be maintained the Managing Director
<b>Services or Supplies</b>	means as defined in Regulation 2 of the PCRs under "public service contracts" and "public supply contracts" respectively
<b>SQ</b>	means the Selection Questionnaire

- Waiver Request Form** means the prescribed form to be completed when requesting a waiver in accordance with **Rule 14.4**
- Works** means as defined in Regulation 2 of the PCRs under “public works contracts”
- WTO GPA Threshold** means the current threshold above which the PCR’s apply, currently £214,904 inclusive of VAT for services and supplies £663,540 inclusive of VAT for social and other specific services and £5,372,609 for works inclusive of VAT

1.2. References in these Rules to:-

- a) any legislation (e.g. Act, Statutory Instrument, WTO requirement) include a reference to any amendment or re-enactment of such legislation;
- b) the value of any Contract are to the total estimated aggregate gross value payable (including VAT where applicable) over the full period of the Contract including any options or extensions to the Contract without any deduction for income due to the Contractor or the Company;
- c) the singular include the plural and vice versa;
- d) the masculine include the feminine and vice versa;
- e) Directors, the Commercial Manager and the Head of Operations shall be taken to include such Employees as are designated to undertake the duties and responsibilities set out in these Rules. A record of all duties and responsibilities as delegated under these Rules is to be maintained by the Directors, the Commercial Manager and the Head of Operations.

**2. GENERAL**

- 2.1. These Rules are made by the Company and define the correct procedures to be followed when the Company enters into any contractual arrangement.
- 2.2. These Rules apply to all Contracts for Works, Supplies and Services but do not apply to:-
- a) contracts of employment;
  - b) Property Contracts; and
  - c) financial instruments (including, but without limitation, shares, bonds, bills of exchange, future or options contracts).
- 2.3. The Managing Director shall review the application and effect of these Rules and make an annual report or as required but no less than once per year to the Board recommending such amendments to the Rules as are considered appropriate.
- 2.4. The Company has produced a Procurement Handbook which sets out important issues to be considered in the procurement context. These Rules should be read in conjunction with the Procurement Handbook.

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- 2.5. Where a Contract for the acquisition or hire of goods or services involves any form of Leasing Agreement to finance the transaction then the Director shall undertake the negotiation of terms and authorise the arrangement in accordance with the Company's Finance Procedures.
- 2.6. The Managing Director shall ensure that all documentation relating to Contracts and procurement processes is retained in accordance with the Company's Records Retention and Destruction policy.
- 2.7. Where the Company has awarded a Contract to any person to supervise or otherwise manage a Contract on its behalf such a person shall be required to comply with these Rules as if he were an Employee of the Company.
- 2.8. Wherever appropriate procurement shall be undertaken using the standard precedent documents contained in the Procurement Handbook applying to SQ's (PQQ as defined in the PAS91 for Works), ITTs or ITBs. Wherever alternative documents are to be used they must be approved by the Managing Director, Commercial Manager or Head of Operations.
- 2.9. All Employees shall adhere to any approved Procurement Strategy of the Company.
- 2.10. Where the Company is procuring in partnership with bodies governed by public law who are the lead procurer, subject to agreement from the Managing Director, the Company will follow the lead procurers Procurement and Contract Procedures or equivalent.
- 2.11. Where the total Contract value for procurement is within the values in the first column of **Table 1** and **Table 2**, below, the award procedure in the second column must be followed.
- 2.12. Where a proposed procurement includes two or more types of provision (i.e. Goods, Services or Works) the value shall be based on the provision that characterises the main subject of the Contract in question.

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**Table 1 - Goods and Services**

Total Contract Value (Including VAT)	Award & Transparency Procedure	Signing Arrangement and Approval
£0 up to £5,000	<p>A quotation shall be invited in accordance with <b>Rule 7</b>.</p> <p>Does <u>not</u> need to be advertised using the E-Sourcing system or published on to Contracts Finder.</p>	<p><u>One Signature</u> The Managing Director, Commercial Manager or Head of Operations (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation).</p>
£5,000 up to £100,000	<p>Quotes should be invited or the Best Value Form process followed in accordance with <b>Rule 7</b>.</p> <p>Does <u>not</u> need to be advertised using the E-Sourcing system or Contracts Finder.</p> <p>The Employee responsible for the contract <u>must</u> notify the Buying Manager of any Contract awarded to enable the contract details to be published on the Company's Contracts Register. Awarded contracts with a value above £30,000 (inclusive of VAT) must also be published on Contracts Finder.</p>	<p><u>One signature</u> The Managing Director, Commercial Manager or Head of Operations (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation).</p>
£100,000 up to WTO GPA Threshold (currently £214,904)	<p>Bids must be invited in accordance with <b>Rule 8</b>.</p> <p>These <u>must</u> be advertised using the E-Sourcing system and published to Contracts Finder.</p> <p>These contracts <u>must</u> be published on the Company's Contracts Register.</p>	<p><u>One signature</u> The Managing Director, Commercial Manager or Head of Operations (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation).</p>
Above WTO GPA Threshold (currently £214,904)	<p>Follow the appropriate procedure as set out in <b>Rules 0 and 10.9</b>.</p> <p>The Managing Director must be informed of the procurement and approval sought through the Governance process.</p> <p>These <u>must</u> be advertised using the E-Sourcing system and published to Contracts Finder.</p> <p>These contracts <u>must</u> be published on the Company's Contracts Register.</p>	<p><u>Under hand contracts</u> Two signatures.</p> <p>The Managing Director (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation) <b>AND</b> One of either the Commercial Manager or the Head of Operations (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation).</p> <p><u>Executed contract as a Deed</u> Two signatures.</p> <p>The Managing Director (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation) <b>AND</b> One of either the Commercial Manager or the Head of Operations as witness.</p>



**Table 2 - Works and Concessions**

Total Contract Value (Including VAT)	Award Procedure	Signing Arrangement and Approval
£0 up to £250,000	<p>Quotes should be invited or the Best Value Form process followed in accordance with <b>Rule 7</b>.</p> <p>Does <u>not</u> need to be advertised using the E-Sourcing system or Contracts Finder.</p> <p>The Employee responsible for the contract <u>must</u> notify the Buying Manager of any Contract awarded to enable the contract details to be published on the Company's Contracts Register. Awarded contracts with a value above £30,000 (inclusive of VAT) must also be published on Contracts Finder.</p>	<p><u>One signature</u> The Managing Director, Commercial Manager or Head of Operations (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation).</p>
£250,000.01 up to WTO GPA Procurement Threshold (currently £5,372,609)	<p>Bids must be invited in accordance with <b>Rule 8</b>.</p> <p>These <u>must</u> be advertised using the E-Sourcing system and published to Contracts Finder.</p> <p>These contracts <u>must</u> be published on the Company's Contracts Register.</p> <p>The Managing Director must be informed of any procurement above £1,000,000 and his approval sought. This may be through the Governance process if required by the Managing Director.</p>	<p><u>One signature</u> The Managing Director, Commercial Manager or Head of Operations (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation).</p>
Above WTO GPA Threshold (currently £5,372,609)	<p>Follow the appropriate procedure as set out in <b>Rules 0 and 10.9</b>.</p> <p>The Managing Director must be informed of the procurement and approval sought through the Governance process.</p> <p>These <u>must</u> be advertised using the E-Sourcing system and published to Contracts Finder.</p> <p>These contracts <u>must</u> be published on the Company's Contracts Register.</p>	<p><u>Under hand contracts</u> Two signatures.</p> <p>The Managing Director (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation) <b>AND</b> One of either the Commercial Manager or the Head of Operations (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation).</p> <p><u>Executed contract as a Deed</u> Two signatures.</p> <p>The Managing Director (or by an Employee authorised to sign on their behalf, as defined in the Scheme of Delegation) <b>AND</b> One of either the Commercial Manager or the Head of Operations as witness.</p>

### 3. COMPLIANCE WITH LEGISLATION AND STANDARDS

- 3.1. Every Contract shall comply with all relevant applicable legislation and government guidance.
- 3.2. Where relevant, every Contract shall specify that materials used, goods provided, services supplied or works undertaken (as the case may be) shall comply with applicable standards.

### 4. POWERS

- 4.1. In consultation with the Managing Director, Employees shall ensure that the Company has the legal power to enter into any Contract and that in respect of all Contracts, regardless of whether they involve the procurement or provision by the Company of Works, Supplies, or Services. Employees shall ensure that no Contract shall be entered into which is ultra vires.
- 4.2. The Managing Director shall ensure that a written record of the decision to procure a Contract is made in accordance with the Governance process where **Rule 16** applies.

### 5. FORM OF CONTRACT

- 5.1. Every Contract shall be evidenced in writing and must be signed (as appropriate) by both parties. Signature by the Company shall be in accordance with the requirements set out **Rule 2** and **Rule 6**.
- 5.2. Wherever appropriate, and for all Contracts exceeding £100,000 including VAT in value, such written agreements shall be made on the basis of terms and conditions agreed by the Managing Director, Commercial Manager or Head of Operations. Such terms and conditions may be incorporated into standard order conditions. The Company may accept different terms and conditions proposed by a Contractor provided that the advice of the Managing Director, Commercial Manager or Head of Operations as to their effect has been sought and considered.
- 5.3. The written form of agreement must clearly specify the obligations of the Company and the Contractor and shall include:-
  - a) the work to be done or the Supplies and/or Services to be provided
  - b) the standards which will apply to what is provided
  - c) the price or other consideration payable
  - d) the time in which the Contract is to be carried out
  - e) the remedies which will apply to any breach of Contract.
- 5.4. The written form of agreement for all Contracts exceeding £100,000 including VAT in value must include appropriate clauses, in relation to:-
  - a) anti-bribery and corruption; and
  - b) termination by the Company for persistent and material breach by the contractor
- 5.5. Appropriate clauses, relating to the Freedom of Information Act 2000 and the Data Protection Act 2018 shall, wherever possible, be included in all Contracts.

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## 6. SIGNATURE OF CONTRACTS

- 6.1. Every written Contract must be signed in accordance with this Rule. The Managing Director (or an Employee authorised by the Managing Director) will determine based on the complexity and risk of the Works, Services or Supplies whether a Contract must be signed as a simple contract or as a deed.
- 6.2. The Managing Director also authorises such Contracts to be signed as prescribed in **Rule 2.11**, Table 1 and Table 2 provided that:-
- a) appropriate authority exists for the Company to enter into the Contract, and
  - b) the Contract is either:-
    - i. in a nationally recognised form; or
    - ii. a standard form prepared or approved by the Managing Director, Commercial Manager or Head of Operations; or
    - iii. is otherwise in a form approved by the Managing Director, Commercial Manager or Head of Operations; and
  - c) any variations to approved forms of Contract must themselves be approved by the Managing Director, Commercial Manager or Head of Operations, whether or not they are affected by amending the Contract itself or by correspondence.
- 6.3. Signatures may be affixed to a Contract either using physical, handwritten means or an Electronic Signature, as appropriate and in accordance with UK law.
- 6.4. Electronic Signatures may only be affixed using the Company's chosen electronic signature system or an approved alternative, as agreed by the Managing Director, Commercial Manager or Head of Operations.
- 6.5. The use of Electronic Signatures is not permitted in circumstances where:
- a) the Contract is a deed;
  - b) a physical handwritten signature needs to be filed;
  - c) there is a proviso in the Contract which prevents the use of an Electronic Signature;
  - d) the Contract may need to be enforced in a jurisdiction where Electronic Signatures are not accepted;
  - e) the Contract needs to be notarised.

## 7. QUOTES

### SINGLE QUOTATION (GOODS & SERVICES ONLY)

- 7.1. Where the estimated value of a Contract for Goods and Services is less than or equal to £5,000 including VAT (taking into account the whole life cost of the Contract, including extensions and/or variations) a quote must be obtained and followed by the issuing of a Purchase Order.

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- 7.2. There is no requirement to use the E-Sourcing system or publish the opportunity on Contracts Finder for contracts below £5,000 including VAT.

## MINIMUM THREE QUOTES PROCESS / BEST VALUE FORM

- 7.3. Where the estimated value of a Contract for Goods, Services and/or Works is less than £100,000 including VAT (taking into account the whole life cost of the Contract, including extensions and/or variations) a minimum of three quotes should be sought.
- 7.4. It is the Employee's responsibility to keep a record of quotes sought for audit purposes and to demonstrate best value has been achieved.
- 7.5. If three quotes are not sought, the Contract may be directly awarded using the Best Value Form. It is the Employee's responsibility to complete the Best Value Form.
- 7.6. The Employee is responsible for notifying the Buying Manager of any contract awarded above £5,000 (including VAT) to enable the contract to be published on the Company's Contracts Register.
- 7.7. A notice must be published on Contracts Finder for any contract awarded above £30,000 (including VAT).
- 7.8. There is no requirement to use the E-Sourcing system to advertise the requirement.

## 8. BIDS

- 8.1. If the estimated value of a Contract exceeds £100,000. (including VAT) but is less than the appropriate WTO GPA Threshold, bids must be invited from all potential Contractors in accordance with **Rule 2.11, Table 1 and Table 2**. A notice advertising the opportunity shall be published through the E-Sourcing System and on Contracts Finder and, if considered appropriate, a local newspaper and a suitable professional or trade journal or website. The form of advertising shall take into account the value, location and subject matter of the Contract. The notice shall specify brief details of the Contract, how the ITB documents may be obtained and the closing date for receipt of bids by the Company.
- 8.2. All potential Contractors invited to submit bids shall be provided in all instances with identical information and instructions. Where considered appropriate, the Managing Director, Commercial Manager or Head of Operations may permit potential Contractors who have been invited to submit bids under **Rule 8.1** to also submit variant bids (i.e. bids which do not comply with some or all of the requirements of the primary bid). The same opportunity to submit variant bids must be given to all potential Contractors.
- 8.3. A written bid may only be considered if:-
- it has been received electronically through the E-Sourcing System, or
  - (where permitted in exceptional circumstances) it has been received in a sealed envelope marked "Bid" and indicating the subject matter of the bid; and
  - it has been opened after the expiry of the deadline for submissions and at the same time as other bids for the same subject matter in the presence of at least two Employees authorised to open bids.
- 8.4. Before bids with a value in excess of £100,000 (including VAT) are requested the evaluation criteria must be recorded in writing in the ITB / SQ documents. The evaluation criteria must be identified and the weighting between price and quality established and stated in the ITB / SQ sent to participants.

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- 8.5. If a bid other than the most economically advantageous bid is to be accepted, the written approval of the Managing Director shall be sought and obtained before the bid is accepted.
- 8.6. A bid cannot be accepted where the value exceeds the relevant WTO GPA Threshold. If the value of the bid exceeds the relevant WTO GPA Threshold the Employee must seek tenders in accordance with **Rules 0 and 10.9**.
- 8.7. Before a Contract is awarded after a bid exercise, such steps shall be taken by the Employee, in conjunction with the Managing Director, as are reasonably necessary (having regard to the subject matter, value, duration of the Contract and other relevant factors) to complete a risk assessment of the potential Contractor's financial stability.
- 8.8. Bids may be altered only in accordance with **Rule 9**.
- 8.9. Where a Contract is terminated within the first six months of the Contract commencement date, the Company may award the Contract to the second-placed supplier, provided this demonstrates Best Value and with agreement from the Managing Director.
- 8.10. The evaluation of bids shall be carried out by a panel of suitably qualified Employees who are considered appropriate having regard for the subject matter and value of the Contract.

**9. POST BID NEGOTIATION AND CLARIFICATION**

- 9.1. Post bid negotiations may not be undertaken where the value of the Contract exceeds the relevant WTO GPA Threshold. If the value of a bid exceeds the relevant WTO GPA Threshold, the Managing Director must invite tenders in accordance with **Rules 0 and 10.9**.
- 9.2. Post bid negotiations with selected Participants shall only be carried out where:-
  - a) post bid negotiations are permitted by law; and
  - b) the Managing Director, Commercial Manager or Head of Operations considers that added value may be obtained; and
  - c) post bid negotiations are conducted by a team of suitably experienced Employees approved by the Managing Director, Commercial Manager or Head of Operations and who have been trained in post bid negotiations; and
  - d) a comprehensive, written record of the post bid negotiations is kept by the suitably experienced Employees approved by the Managing Director, Commercial Manager and Head of Operations; and
  - e) a clear record of the added value to be obtained as a result of the post Bid negotiations is incorporated into the Contract with the successful Participant.
- 9.3. **Rules 9.1 and 9.2** shall not operate to prevent clarification of all or part of any bid to the extent permitted by law and where such clarifications are sought the provisions of **Rules 9.2.c) and 9.2.d)** shall apply, except that the word "clarification" shall be substituted for the word "negotiation" in these Rules.

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## 10. ABOVE THRESHOLD TENDERS

10.1. Where the estimated value of the Contracts exceeds the WTO GPA Threshold, above threshold Tenders shall be invited and awarded in accordance with the PCRs and as prescribed in **Rules 0 and 10.9**.

### General Requirements

10.2. Before an Above Threshold Tender is requested the evaluation criteria to be applied to the Above Threshold Tender must be recorded in writing in the SQ and/or ITT documents. The evaluation criteria must be identified and the weighting between price and quality established and stated in the SQ and/or ITT sent to Participants.

10.3. Irrespective of the procurement process being undertaken a Notice must be published on the Find a Tender Service system, where possible this should be through the E-Sourcing system or an appropriate alternative system as agreed with the Managing Director, Commercial Manager or Head of Operations.

10.4. All Participants invited to submit Above Threshold Tenders shall be provided in all instances with identical instructions and information.

10.5. Where considered appropriate, the Managing Director may permit Participants to submit variant Above Threshold Tenders (i.e. tenders which do not comply with some or all of the requirements of the primary tender). The same opportunity to submit variant Above Threshold Tenders shall be given to all Participants. Variant Above Threshold Tenders shall only be considered if the Participant also submits a compliant primary tender.

10.6. The evaluation of the Above Threshold Tenders submissions shall be carried out by Employees who are considered appropriate having regard for the subject matter and value of the Contract.

10.7. All Tenders undertaken in accordance with **Rule 0** shall have a minimum of three appropriate Employees (excluding the consensus moderator) to undertake the evaluation process. The evaluation process will include:

- a) Individual evaluation assessment and scoring
- b) Consensus marking exercise, chaired by a member of North Yorkshire Council's Procurement and Contract Management Service
- c) Independent verification, where required
- d) Moderation by evaluation panel, where required

10.8. All evaluation panel members must have completed suitable evaluation training prior to completing any evaluation process.

10.9. Where a Contract is terminated within the first six months of the Contract commencement date, the Company may award the Contract to the second-placed supplier, with agreement of the Managing Director provided this demonstrates Best Value and none of the original award criteria has changed.

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## 11. OPTIONS FOR ABOVE THRESHOLD TENDERS

11.1. The Governance Process shall identify which of the following Above Threshold Tenders Procedures shall be used to invite tenders for Contracts with a value in excess of the relevant WTO GPA Procurement Threshold:

- a) the Open Procedure (as prescribed by Regulation 27)
- b) the Restricted Procedure (as prescribed by Regulation 28)
- c) the Competitive Procedure with Negotiation (as prescribed by Regulation 29)
- d) the Competitive Dialogue Procedure (as prescribed by Regulation 30)
- e) the Innovation Partnership Procedure (as prescribed by Regulation 31)
- f) Use of the Negotiated Procedure without prior publication (as prescribed by Regulation 32)

and such identified process shall be used for the invitation of Above Threshold Tenders in accordance with the requirements of the PCR's.

11.2. The Governance Process Report shall also identify which of the following techniques and instruments which can be used for Electronic and Aggregated Procurements:

- a) Framework Agreement (as prescribed by Regulation 33)
- b) Dynamic Purchasing System (as prescribed by Regulation 34)
- c) Electronic auctions (as prescribed by Regulation 35)
- d) Electronic catalogues (as prescribed by Regulation 36)

## 12. RECEIPT AND OPENING OF ABOVE THRESHOLD TENDERS

12.1. A written Above Threshold Tender may only be considered if:-

- a) it has been received electronically through the E-Sourcing System, or (where permitted in exceptional circumstances) it has been received electronically through an appropriate alternative method such as a secure email inbox; or
- b) (where permitted under Regulation 84 (h)) it has been received in hard copy in a sealed envelope marked "Above Threshold Tender" and indicating the subject matter of the Above Threshold Tender, and the identity of the Participant cannot be ascertained from the tender envelope; and
- c) (subject to **Rule 12.4**) it has been received by the Above Threshold Tender closing date and time.

12.2. The Managing Director (or an Employee designated) shall be responsible for the reception and safe custody of Above Threshold Tenders until they are opened.

12.3. Electronically submitted Above Threshold Tenders, whether electronic or hard copy must be opened at the same time, in an auditable way, by an independent Employee designated by the Managing Director or an independent employee from North Yorkshire Council's Procurement and Contract Management Service.

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- 12.4. Where permitted under Regulation 84(h) of the PCTs and Above Threshold Tenders are returned in hard copy format a written record shall be maintained of the Above Threshold Tenders received. Such a record shall include the date and time of Above Threshold Tender opening, the identity of the Employee(s) present, the identities of Participants and the tendered sums (where readily ascertainable).
- 12.5. Above Threshold Tender submitted in hard copy must be opened at the same time and in the presence of the Managing Director (or an Employee designated).
- 12.6. If an Above Threshold Tender is received after the specified closing date and time it may not be considered unless the Managing Director, Commercial Manager or Head of Operations is satisfied that the Above Threshold Tender was submitted electronically or posted or otherwise dispatched in sufficient time to be delivered before the specified time but that delivery was prevented by an event beyond the control of the Participant.

### 13. ABOVE THRESHOLD TENDER EVALUATION AND ACCEPTANCE

- 13.1. The Employees on the evaluation panel shall evaluate Above Threshold Tender using the evaluation criteria published in accordance with **Rule 10.2**.
- 13.2. Before a Contract is awarded the Managing Director (or an Employee designated) shall determine if it is proportionate and appropriate to complete a risk assessment to ascertain the financial stability of the successful Participant. The risk assessment shall take into account the subject matter, complexity, duration, value and any other such factors as may be deemed to be relevant. This shall be undertaken in accordance with the Governance Process (Stage 2) where appropriate.
- 13.3. On completion of the evaluation of the Above Threshold Tender received and once all internal approvals have been obtained through the Governance Process (Stage 2), the Managing Director (or an Employee designated) shall write to all Participants informing them of the outcome of the Above Threshold Tender evaluation and providing feedback on the content of their submission, in accordance with Regulation 55 of the PCRs.
- 13.4. The Managing Director (or an Employee designated) shall wait a minimum of ten days (15 days if not sent electronically) from the date of issue of the letters notifying the Participants of the result of the evaluation before completing the Contract with the successful Participant, except where not required for example for call-offs under an existing Framework.
- 13.5. The Managing Director (or an Employee designated) or a member of North Yorkshire Council's Procurement and Contract Management Service shall send for publication a Contract Award Notice stating the outcome of the procurement procedure no more than 30 days after the award of the Contract.

### 14. EXCEPTIONS TO PROCUREMENT AND CONTRACT PROCEDURES

- 14.1. The Managing Director, Commercial Manager and Head of Operations do not need to invite bids in accordance with **Rule 8**, in the following circumstances:-
  - a) purchases via Framework Agreements which have been established either by the Company or by other public sector bodies or consortia and where such framework agreements are lawfully accessible to the Company. Contracts awarded from such Framework Agreements shall be awarded in accordance with the provisions of that Framework Agreement; or
  - b) where funding is received by the Company, either in its own right or as an accountable body, and the terms of such funding state that it must be applied in accordance with those terms; or

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- c) purchases at public auctions (including internet auction sites, e.g. Ebay) where the Managing Director is satisfied that value for money will be achieved; or
- d) the purchase of Supplies, Works or Services which are of such a specialised nature as to be obtainable from one Contractor only; or
- e) repairs to or the supply of parts for existing proprietary machinery or plant where to obtain such supplies from an alternative supplier would invalidate the warranty or contractual provisions with the existing supplier; or
- f) Contracts where the Managing Director with the agreement of the Board agree that for reasons of extreme urgency brought about by unforeseeable events un-attributable to the Company, the timescales for obtaining bids cannot be met. A written record shall be signed and dated by the Managing Director, whenever this Rule applies.

14.2. Where any of the exceptions set out in **14.1.c) to 14.1.f)** above are applied a Senior Management Recommendation can be approved by the Managing Director, Commercial Manager or Head of Operations . The Recommendation shall be signed, dated and kept. The Managing Director (or an Employee designated) shall maintain a register of all recommendations made under this Rule.

14.3. The Managing Director does not need to invite Above Threshold Tenders in accordance with **Rule 10.9 and 12**, in the following circumstances:-

- a) purchases via Framework Agreements which have been established either by the Company or by other public sector bodies or consortia (including, but not limited to Public Sector Buying Organisations) and where such Framework Agreements are lawfully accessible to the Company. Contracts awarded from such Framework Agreements shall be awarded in accordance with the provisions of that Framework Agreement. Where appropriate Employees should apply a minimum 10 day standstill period for all call-off Contracts awarded under an existing Framework Agreement. This is not mandatory but is deemed best practice; or
- b) where:
  - i. Regulations 12 or 72 of the PCRs apply; or
  - ii. any other specific exclusions as set out in the PCRs apply;

and the Managing Director and Board are in agreement. A written record shall be signed and dated whenever this Rule applies and the Managing Director (or an Employee designated) shall maintain a register of such written records.

### Waivers

- 14.4. Specific exceptions to **Rule 8** are permitted in such other circumstances as the Managing Director may agree.
- 14.5. Requests for waivers shall be made using the Waiver Request Form prescribed by the Managing Director which shall specify the reasons for the request.
- 14.6. The Managing Director (or an Employee designated) shall maintain a register of all requests made under this Rule.

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## 15. COMPLIANCE, CONTRACT REGISTER AND FORWARD PROCUREMENT PLANS

- 15.1. Every Employee shall comply with these Rules and any unauthorised failure to do so may lead to disciplinary action.
- 15.2. The Managing Director shall be responsible for monitoring adherence to these Rules.
- 15.3. The Managing Director, Commercial Manager and Head of Operations shall take all such steps as are reasonably necessary to ensure that Employees are aware of and comply with these Rules and the Procurement Handbook.
- 15.4. An annual report on procurement matters, such report to include an annual procurement plan and actions arising from the annual procurement plan, will be presented to a meeting of the Board.
- 15.5. The Company maintains a Contract Register the purpose of which is to record key details of all Contracts with an aggregate value of £5,000 (including VAT) or more.
- 15.6. The Managing Director (or an Employee designated) shall ensure that:-
  - a) all relevant Contracts (including those Contracts to which **Rule 14** applies) are entered onto the Contract Register
  - b) the Contract Register is maintained by entering new Contracts onto it and removing expired Contracts from it in line with any Records Retention and Destruction policy in force at that time for the Company.

### Contracts Finder

- 15.7. When a Contract in excess of £30,000 (including VAT) is awarded the Buying Manager (or an Employee designated) or a member of North Yorkshire Council's Procurement and Contract Management Service shall ensure that such information as is prescribed in the PCRs is published on Contracts Finder via the E-Sourcing system (or approved alternative).

## 16. GOVERNANCE PROCESS REPORTS

- 16.1. When a procurement is being considered which is expected to exceed the financial value thresholds specific in **Rule 16.2** the Governance Process must be completed and signed off, as detailed in the **Table 3** below.

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**Table 3 - Governance Process - Authorisation to Approve**

Governance Process	Approval process
<b>Stage 1</b> – Options Appraisal	Managing Director <b>AND</b> Commercial Manager or Head of Operations
<b>Stage 2</b> – Statement of Award	Managing Director <b>AND</b> Commercial Manager or Head of Operations
<b>Stage 3(a)</b> – Contract Variation	Managing Director
<b>Stage 3(b)</b> – Contract Termination (during contract period)	Managing Director

16.2. The whole contract financial value thresholds for the purposes of **Rule 16.1** are:

- a) Works and Concession Contracts - £1,000,000 inclusive of VAT
- b) Goods and Services contracts - £214,904 inclusive of VAT.

### Stage 1 report

16.3. When a procurement outside of an existing arrangement is being considered which is expected to exceed the whole contract financial value Threshold as indicated in **Rule 16.2**, the Employee must complete the Governance process Stage 1 report and obtain relevant approvals in line with **Rule 16.1, Table 3**. The Stage 1 report shall include the estimated “whole life” financial value of the Contract, the procurement methodology and any other relevant factors.

16.4. No action leading towards procurement, including any steps to undertake a further competition under an existing framework arrangement, shall be undertaken until approval of the process has been given as set out in **Rule 16.3**.

### Stage 2 report

16.5. When a procurement process has concluded the Employee must complete a statement of award and obtain relevant approvals in line with **Rule 16.1, Table 3**. The statement shall include the final cost, the successful supplier, contract terms and any other relevant factors.

### Stage 3(a) report

16.6. Contracts with a value in excess of the relevant whole contract financial value Threshold, as indicated in **Rule 16.2**, may be varied in accordance with the terms of that Contract or as outlined in Regulation 72 of the PCRs.

16.7. If the contract was originally below the relevant whole contract financial value, as indicated in **Rule 16.2**, but the variation would result in the contract value exceeding this value a Stage 3 report must be undertaken.

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16.8. Approval to proceed must be given and the report signed by the Managing Director.

**Stage 3(b) report**

16.9. If an Employee requires a Contract to be terminated, then this must be done in accordance with the terms of the Contract.

16.10. Approval to proceed must be given and the report signed by the Managing Director.

**17. CONTRACT MANAGEMENT**

17.1. All contracts entered into by the Company shall be assigned an Employee as the contract manager.

17.2. The Employee managing the contract shall take all such steps as are appropriate to monitor and review the performance of the Contract, having regard to its value, nature, duration and subject matter. As part of the monitoring and review process the Employee shall maintain adequate records of Contract performance and details of review meetings with the Contractor. Such records and details shall be made available to Internal Audit whenever required and shall be recorded in any relevant Governance Process report. Such records shall also be used on the basis for any permitted extension to the Contract.

17.3. Where appropriate the Employee involved in contract management shall have received a level of formal training commensurate with the nature of the Contract.

**Contract Variation**

17.4. Contracts with a value below the relevant WTO GPA Threshold may be varied in accordance with the terms of that Contract. Any proposed variations which have the effect of materially changing the Contract must be approved by the Managing Director, whether or not they are affected by amending the Contract itself or by correspondence.

17.5. Contracts with a value in excess of the relevant WTO GPA Threshold may be varied or extended in accordance with the terms of that Contract and/or as outlined in Regulation 72 of the PCRs. Approval must be sought in accordance with **Rule 16.1** (Table 3 - Governance Process - Authorisation to Approve).

**Contract Termination**

17.6. Contracts with a value below the relevant WTO GPA Threshold may be terminated in accordance with the terms of that Contract.

17.7. If an Employee requires a Contract which exceeds the WTO GPA Thresholds as detailed within **Rule 16.2** to be terminated, then this must be done in accordance with the terms of the Contract. Approval must be sought in accordance **Rule 16.1** (Table 3 - Governance Process - Authorisation to Approve).

**18. TRAINING FOR PROCUREMENT**

18.1. Where appropriate any Employee involved in procurement activities shall have received a level of formal training commensurate with the nature of the procurement activity being undertaken.

**19. DECLARATION OF INTERESTS**

19.1. A Conflict of Interest declaration must be completed by all members of the evaluation panel. A Confidentiality Agreement or Declaration form must also be completed by any members of the evaluation

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panel who are not directly employed by the Company or North Yorkshire Council unless there are alternative appropriate confidentiality provisions within the persons appointment documents (such as a Consultancy Agreement).

- 19.2. If it comes to the knowledge of an evaluation panel member or Employee that a Contract in which they have an interest has been or is proposed to be entered into by the Company, they shall immediately give written notice to the Commercial Manager, Buying Manager or a member of North Yorkshire Council's Procurement and Contract Management Service.

## 20. HIRING AND ENGAGING STAFF

- 20.1. Where an Employee is hiring or engaging a staff member who is not on the Company payroll there is a legal requirement to determine whether it is the responsibility of the Company to deduct tax and national insurance at source, in accordance with the requirements of the Social Security Contributions (Intermediaries) Regulations 2000, as amended (IR35).

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